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Reader Aids
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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

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OFFICE OF SPECIAL COUNSEL

5 CFR Part 1810

Implementation of the Whistleblower Protection Act; Investigative Authority of the Special Counsel; Correction

AGENCY: Office of Special Counsel.

ACTION: Interim regulations; correction.

SUMMARY: On November 14, 1989, in **Federal Register** Document Number 89–26707, the Office of Special Counsel published interim regulations to implement the provisions of the Whistleblower Protection Act. 54 FR 47341. Inadvertently omitted from that document was the authority citation for Part 1810. This publication corrects that omission.

FOR FURTHER INFORMATION CONTACT: Henry Darnell Lewis, (202) or FTS 653–8982.

Dated: November 30, 1989.

Mary F. Wieseman,

Special Counsel.

On page 47342, column 2, of Volume 54, **Federal Register**, in the issue of Tuesday, November 14, 1989, correctly add the authority citation for part 1810 to read as follows:

PART 1810—INVESTIGATIVE AUTHORITY OF THE SPECIAL COUNSEL

Authority: 5 U.S.C. 1212(e).

[FR Doc. 89–28634 Filed 12–6–89; 8:45 am]
BILLING CODE 7400–02–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 693, Amdt. 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action increases the quantity of fresh California-Arizona lemons that may be shipped to market during the period from November 26 through December 2, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: Regulation 693, Amendment 1 (7 CFR part 910) is effective for the period from November 26 through December 2, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3861.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This amendment is issued under Marketing Order No. 910, as amended (7 CFR part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. The action amends § 910.993 (Lemon Regulation No. 693) which was published in the **Federal Register** on November 27, 1989 (54 FR 8739). It is found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the California-Arizona lemon marketing policy for 1989–90. The Committee met publicly on November 28, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and, by an 11 to 2 vote, recommended that the quantity of lemons deemed advisable to be handled during the specified week be increased from 300,000 cartons to 325,000. The Committee reports that the demand for lemons has improved beyond what was anticipated by the Committee on November 21, 1989, when the 300,000 carton recommendation was made.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on this action at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make this action effective as specified, and handlers have been

apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Arizona, California, Lemons, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.993 is revised to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.993 Lemon Regulation 693, Amendment 1.

The quantity of lemons grown in California and Arizona which may be handled during the period from November 26, 1989, through December 2, 1989, is established at 325,000 cartons.

Dated: November 29, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89-28607 Filed 12-6-89; 8:45 am]

BILLING CODE 3410-002-M

Agriculture Marketing Service

7 CFR Part 919

[Docket No. FV 90-103FR]

Peaches Grown in Mesa County, Colorado; 1989–90 Fiscal Period Expenses

AGENCY: Agriculture Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures for the 1989–90 fiscal period for the Administrative Committee (committee), established under Marketing Order No. 919. This action is needed by the committee to pay anticipated marketing order expenses necessary to continue to administer the order.

EFFECTIVE DATE: July 1, 1989 through June 30, 1990.

FOR FURTHER INFORMATION CONTACT: George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–475–3918.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 919, both as amended (7 CFR Part 919), regulating the handling of peaches grown in Mesa County, Colorado. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 28 handlers subject to regulation under the marketing order for peaches grown in Mesa County. Small agricultural service firms have been defined by the Small Business Administration (SBA) (13 CFR 121.2) as those having annual receipts of less than $3,500,000. Likewise, there are about 260 peach producers in Mesa County. Small agricultural producers have been defined by the SBA as those having annual receipts of less than $500,000. The majority of the Mesa County peach handlers and producers may be classified as small entities.

An annual budget of expenses is prepared by the committee and submitted to the Department for approval. The members of the committee are handlers and producers of Mesa County peaches. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area, and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input into the committee's budget recommendation.

An assessment rate is normally recommended by the committee as part of its budget recommendation. However, an assessment rate was not recommended with this budget because a freeze in March, 1989, so severely damaged the Colorado peach crop that there was no assessable production this season.

Until March, 1989, the Federal program had operated jointly with a State marketing order for Mesa County peaches. The State marketing order accounted for more than 95 percent of the assessments and expenses of the two orders. After the State marketing order failed a State-run continuance referendum last January, the committee requested an increase in the 1988–89 Federal expenses and assessment rate. The recommended increases were necessary to cover operating expenses for the last quarter of the fiscal period. The $12,248.70 revised budget (54 FR 20514) required an increase in the assessment rate from one cent to just over four cents per bushel and included some funds transferred from the terminated State order.

In order to maintain its operations this year and be in a position to serve the industry next year, the committee met on September 19, 1989, and unanimously recommended approval of expenditures of $26,572 for the 1989–90 fiscal period. Major expenditure items for the 1989–90 fiscal period, compared with the Federal marketing order's increased expenses for 1988–89, are as follows:

	1989–90	1988–89
Program Operations (salary, rent, etc.).	$8,751.00	$4,930.97
Committee Expenses (per diem, etc.).	450.00	90.00
Compliance	1,000.00	-
Market Research and Development.	5,224.00	7,227.73
Contingency (Reserve)	11,147.00	-
Total	26,572.00	12,248.70

Because of the total loss of the crop after the freeze, funds to cover 1989–90 expenditures will not be raised through assessments on 1989–90 crop peaches. Rather, income will come from the following sources:

- $2,107 carried over from the 1988–89 operating budget,
- $4,365 in 1988–89 assessments paid by handlers after June 30, 1989,
- $15,900 voluntary contributions (refunds from the State program donated by industry members),
- $3,700 miscellaneous income, including payments by the State government for services rendered by the committee, and

• $500 unexpended funds from the State promotion program.

The voluntary contributions represent money refunded to industry handlers and subsequently donated to the committee after the State marketing order program was terminated.

Notice of this action was published in the November 8, 1989, issue of the Federal Register (54 FR 46903). The comment period ended November 20, 1989. No comments were received.

This action will not impose any additional direct costs on handlers. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of the information and recommendations submitted by the committee, and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

Because committee expenses are incurred on a continuous basis during the entire fiscal period, approval of the expenditures must be expedited. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553).

List of Subjects in 7 CFR Part 919

Colorado, Marketing agreements and orders, Peaches.

For the reasons set forth in the preamble, 7 CFR part 919 is amended as follows:

PART 919—PEACHES GROWN IN MESA COUNTY, CO

1. The authority citation for 7 CFR part 919 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 919.228 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 919.228 Expenses.

Expenses of $26,572 are authorized to be incurred by the Administrative Committee for the fiscal period ending June 30, 1990. Unexpended funds from the 1988–89 fiscal period may be carried over as a reserve.

Dated: December 4, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–28608 Filed 12–6–89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 984

[FV–89–108FR]

Expenses and Assessment Rate for Walnuts Grown in California for 1989–90

AGENCY: Agricultural Marketing Service.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 984 for the 1989–90 marketing year established under the walnut marketing order. This action is needed for the Walnut Marketing Board (Board), the agency responsible for the local administration of the order, to operate during the 1989–90 marketing year. The Board incurs expenses on a continuous basis and needs to collect funds during the year to pay those expenses. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: August 1, 1989, through July 31, 1990.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2524–S, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 984 (7 CFR part 984), both as amended, regulating the handling of walnuts grown in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 65 handlers of walnuts grown in California who are subject to regulation under the walnut marketing order and approximately 5,000 producers of walnuts in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of walnut producers and handlers may be classified as small entities.

The walnut marketing order requires that the assessment rate for a particular marketing year shall apply to all assessable walnuts handled from the beginning of such year. An annual budget of expenses is prepared by the Board and submitted to the U.S. Department of Agriculture for approval. The Board consists of handlers, producers, and a non-industry member. They are familiar with the Board's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Board is derived by dividing anticipated expenses by expected shipments of walnuts. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Board's expected expenses. The recommended budget and rate of assessment is usually acted upon by the Board shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Board will have funds to pay its expenses.

The Board met on September 15, 1989, and unanimously recommended 1989–90 marketing order expenditures of $1,463,782 and an assessment rate of $0.0085 per kernelweight pound of walnuts. In comparison, 1988–89 marketing year budgeted expenditures were $1,475,294, and the assessment rate was $0.0085 per kernelweight pound of walnuts. Major budget categories for 1989–90 are $79,436 for administrative expenses, $300,000 for production research, $700,000 for the domestic market research and development program, and $37,000 for the 1990 crop estimate. Comparable actual expenditures for the 1988–89 crop were $75,999, $244,968, $688,554, and $30,500,

respectively. Assessment income for 1989–90 is estimated to total as much as $1,539,707 based on an estimated crop of 181,142,000 kernelweight pounds of walnuts.

While this final action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This action adds a new § 984.341 and is based on Board recommendations and other available information. A proposed rule was published in the **Federal Register** on October 31, 1989 (54 FR 45738). Comments on the proposed rule were invited from interested persons until November 10, 1989. No comments were received.

After consideration of the information and recommendations submitted by the Board and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

This action should be expedited because the Board needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. In addition, handlers are aware of this action, which was recommended by the Board at a public meeting. Therefore, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Part 984

California, Marketing agreements and orders, Walnuts.

For the reasons set forth in the preamble, 7 CFR part 984 is amended as follows:

PART 984—WALNUTS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 984.341 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 984.341 Expenses and assessment rate.

Expenses of $1,463,782 by the Walnut Marketing Board are authorized and an assessment rate of $0.0085 per kernelweight pound of merchantable walnuts is established for the 1989–90 marketing year ending July 31, 1990.

Dated: December 4, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–28609 Filed 12–6–89; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R–0671]

RIN 7100–AA97

Equal Credit Opportunity Business Credit

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is revising Regulation B to implement amendments to the Equal Credit Opportunity Act. The amendments mandate that creditors give written notice to business applicants of the right to a written statement of reasons for a credit denial. Creditors are also required to retain records relating to business credit applications for at least one year.

The revisions to Regulation B implement the statutory amendments and define coverage based on a credit applicant's gross revenues. Creditors must provide written notices and retain records in accordance with the new law on credit applications involving businesses with gross revenues of $1 million or less. Applications from businesses with gross revenues greater than $1 million and applications for trade credit and similar types of business credit are subject to modified notice and recordkeeping rules provided in Regulation B. Business credit transactions, regardless of the revenue size of the business, remain covered by all other relevant provisions of the Equal Credit Opportunity Act and Regulation B.

EFFECTIVE DATE: December 8, 1989, but mandatory compliance is not required until April 1, 1990.

FOR FURTHER INFORMATION CONTACT: In the Division of Consumer and Community Affairs, at (202) 452–2412 or 452–3667: Adrienne Hurt, Senior Attorney, or Jane Ahrens, Staff Attorney; for the hearing impaired *only*, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD) at (202) 452–3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

(1) Background

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691–1691f, makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of sex, marital status, race, color, national origin, religion, age (provided the applicant has the capacity to contract), because all or part of an applicant's income derives from any public assistance, or because an applicant has in good faith exercised any right under the Consumer Credit Protection Act. The ECOA provides that a credit applicant has the right to obtain a written statement of reasons for a denial of credit. The ECOA is implemented by the Board's Regulation B, 12 CFR part 202. A staff commentary to the regulation, 12 CFR part 202 Supp. I, applies and interprets its requirements. The fourth proposed update to the commentary to Regulation B, including interpretations of the ECOA amendments on business credit, is published elsewhere in this **Federal Register**.

Pursuant to authority granted under section 703(a) of the ECOA, 12 U.S.C. 1691b(a), the Board has previously provided limited exceptions from some of the regulation's requirements for certain types of credit, including extensions of credit primarily for business, commercial or agricultural purposes ("business credit"). The current exceptions for business credit relate to written notification of credit denials, record retention, marital status inquiries, and supplying information to third parties about accounts held jointly by married persons.

The Women's Business Ownership Act Amendments to the ECOA

For a number of years, members of Congress and others have expressed concern that the business credit exceptions under Regulation B did not provide business credit applicants, particularly small-business owners, adequate rights under the ECOA. On October 25, 1988, the ECOA was amended by the Women's Business Ownership Act of 1988, Public Law No. 100–533, 102 Stat. 2689. The primary intent of the statutory amendments is to provide small-business owners the same procedural rights under the ECOA that are afforded to consumer credit borrowers. These amendments to the ECOA require creditors to (1) give business credit applicants written notice of the right to obtain reasons for a credit denial in writing and (2) retain records on business credit applications for at

least one year, pursuant to the Federal Reserve Board's implementing regulation.

The statutory provision governing the Board's rulewriting authority also was amended to provide that any exemption from the requirements of the act or implementing regulation issued by the Board will end after five years. The Board may extend an exemption for an additional five-year period if the Board makes an express finding that an extension is appropriate.

The Revisions to Regulation B

On July 14, 1989, the Board published for comment a proposed rule to amend Regulation B to implement the amended statute. [54 FR 29734] The Board received approximately 200 comment letters on the proposal. More than half of the commenters generally objected to the legislation without addressing specific aspects of the Board's proposal. About one-third of the letters provided comment on the proposed rules. There was general support for the use of gross revenues as the test to identify the business credit applicants intended by the Congress to be covered by the amendments, though some commenters preferred that coverage be based on a loan size or some dual revenue and loan-size test. Some expressed concern about the costs associated with the proposed record retention rules.

Based on express findings required by the act, the comments, and further analysis, the Board has issued herein a final rule that defines the business credit applications to which the new notice and recordkeeping rules apply and provides alternative ways for complying with the notice requirements. Some commenters had suggested that the dollar amount of the revenue cutoff be lower. Smaller financial institutions were concerned that the amendments would have a disproportionate impact on their institutions because the proposed cutoff would cover virtually all of their loans. Other commenters believed that the revenue cutoff should be much higher. In the final rule, the Board has increased the test for coverage from $500,000 to $1 million in gross revenues. This figure covers approximately 86 percent of all for-profit businesses and will afford the ECOA's procedural rights to a wider variety of businesses. The Board has also revised the provisions on notice and recordkeeping that govern all other business credit transactions, and has eliminated an exception that used to permit marital status inquiries in business credit applications.

The new notice and record retention rules applicable to business credit generally are similar to the rules that govern nonbusiness credit. The primary difference relates to recordkeeping rules—12 months for business credit and 25 months for nonbusiness credit. Creditors that elect to follow the rules governing nonbusiness credit for all transactions will be in full compliance with the act and regulation. Similarly, creditors may, but are not required to, treat all applications for business credit the same (irrespective of revenue size) by providing notice and keeping records in accordance with the new requirements.

The new provisions contained in paragraph (a)(3)(i) of § 202.9 (Notifications) and paragraphs (b)(1)–(4) of § 202.12 (Record Retention) govern applications from businesses that had gross revenues of $1 million or less in its preceding fiscal year. Applications for trade credit, credit incident to factoring arrangements, and similar types of business credit—as well as credit applications from businesses with revenues exceeding $1 million—are subject to the modified rules for notification and record retention set forth in §§ 202.9(a)(3)(ii) and 202.12(b)(5) of Regulation B, respectively.

(2) Section-by-Section Summary

The following is a section-by-section summary of the final rule implementing the amendments to the ECOA contained in the Women's Business Ownership Act.

Section 202.2—Definitions

2(g)—Business Credit

The definition of business credit previously contained in § 202.3(d)(1) has been moved to § 202.2 (Definitions), paragraph 2(g). The definition of "Board," previously contained in § 202.2(g), has been removed to avoid the need to renumber succeeding paragraphs. As used in the regulation, the term Board means the Board of Governors of the Federal Reserve System.

Section 202.3—Limited Exceptions for Certain Classes of Transactions

3(a)–(d)—Public Utilities, Securities, Incidental and Government Credit Exceptions

In addition to business credit, Regulation B provides exceptions from certain provisions for credit extensions involving public utility services; credit extensions subject to regulation under the Securities Exchange Act; credit payable in four or fewer installments, in which no credit card is used and no finance charge is imposed ("incidental credit"); and extensions of credit to federal and state governments. In the July proposal, the Board solicited comment on the appropriateness of retaining the special rules for these classes of transactions. Except in the case of incidental credit, the Board received no unfavorable comment. The final rule retains the current exceptions in § 202.3 of the regulation for all four categories without change, except that the government credit exception has been redesignated § 202.3(d).

The Board believes that the limited exceptions remain appropriate. The exceptions for public utilities credit are minimal and relate to marital status inquiries, reporting credit information to third parties, and record retention. Public utilities credit is subject to most of the regulatory requirements including, for example, the rules governing information that may be considered in evaluating applications and the rules for notifying applicants of credit denials. Securities credit is subject to the Securities Exchange Act of 1934 which continues to impose duties upon securities brokers and dealers to ascertain certain information about business entities and individuals applying for credit, such as legal relationships and the types of ownership interest in property. Therefore, the Board believes that the exceptions from Regulation B's restrictions (on inquiries about spouses and marital status and on obtaining the signatures of guarantors and cosigners) remain appropriate. Extension of credit to governments or governmental subdivisions are subject to the general rule barring unlawful credit discrimination; the costs of compliance clearly outweigh any protections that might be afforded by applying all of the other ECOA requirements.

One commenter opposed the incidental credit exception on the ground that consumers are not receiving the full protections of the act because some retail sellers deliberately structure financing arrangements to fall within the exception. Notwithstanding this comment, the credit transactions to which the exception applies are largely incidental to some other activity (such as the providing of health care or other professional services) where the creditor extends credit as an accommodation to the consumer and is not in the business of extending credit.

Business credit exceptions

The provisions of paragraph (d) on business credit have been moved to other sections or eliminated as discussed below. Paragraph (e) on credit

to governments has been redesignated paragraph (d).

Former paragraph (d)(1) containing the definition of business credit has been moved to § 202.2(g). Former paragraph (d)(2) contained exceptions for all business credit transactions relating to marital status inquiries and credit reporting; the final rule eliminates both exceptions as discussed below. The substance of the rules in paragraph (d)(3) notifications is now in § 202.9(a)(3)(ii). The substance of the rules on record retention in that paragraph is now in § 202.12(b)(5).

The final rule prohibits creditors from inquiring about the marital status of a business credit applicant for unsecured credit. The regulation permits creditors to inquire about marital status if an applicant resides in a community property state or relies on property located in such a state to repay a debt, or applies for secured credit. A few commenters expressed concern that not knowing the marital status of an applicant for unsecured business credit, particularly in the case of a sole proprietor, would adversely affect the creditor's ability to determine ownership rights in property held by the applicant. The prohibition on marital status inquiries, however, does not impair a creditor's ability to inquire about ownership rights in, or the name of any co-owner of, property relied upon by a credit applicant to satisfy a debt in the event of default. (*See generally* § 202.5(d)(1) and accompanying commentary.)

The final rule deletes an exception for business credit from § 202.10 regarding the reporting of credit information for joint accounts held by spouses. Some commenters expressed concern that eliminating the exception might lead to confusion about whether the reporting requirements apply to the business accounts of sole proprietors. Section 202.10 was designed to remedy a situation related to consumer credit accounts, where credit histories used to be reported only in the husband's name and, as a consequence, married women who become divorced or widowed were left without a credit history. The provision is not relevant to business applicants such as corporations or partnerships, nor is it intended to apply to individual business applicants such as sole proprietors. Consequently, as a technical matter, no specific exception is necessary. Nevertheless, to address any possible ambiguity, the Board's official staff commentary to Regulation B will make clear that the credit reporting rules apply only to consumer accounts.

Section 202.9—Notifications

9(a)—Notification of action taken, ECOA notice, and statement of specific reasons

Paragraph (a)(3)—Notification to Business Credit Applicants

Paragraph (a)(3) contains the notification requirements for business credit applicants.

Paragraph (a)(3)(i)

Paragraph (a)(3)(i) implements section 703(a)(5) of the act, which requires creditors to inform business loan applicants, in writing, of the right to a written statement of the reasons for the denial of loan applications. These rules govern credit applications from businesses with $1 million or less in gross revenues (including applications from individuals applying for business-purpose credit), except that applications for trade similar credit (regardless of the revenue size of the business) are governed by the rules in paragraph (a)(3)(ii).

Creditors may notify business credit applicants of a credit decision orally or in writing. Notice of the credit decision must be given in accordance with the timing requirements of paragraph (a)(1)—typically within 30 days of receiving a "completed" application. Under § 202.2(f), an application is deemed to be "completed" when the creditor has received all the information it regularly obtains and considers in evaluating applications for credit (including any information requested from the applicant).

Creditors must satisfy the requirement to provide a written notice of the right to a statement of reasons in one of two ways. The creditor may follow the rule used for nonbusiness credit and give the written notice of the right to a statement of reasons after a credit denial or other adverse action is taken. And of course, as in the case of nonbusiness credit, the creditor may provide a written statement of the specific reasons for a credit denial, instead of merely giving notice of the right.

Alternatively, the creditor may give the notice to business applicants at the time of application. Notice could be given on a separate piece of paper or included on any documentation provided to the applicant, as long as the notice is given in a form the applicant may retain. The disclosure should be readily noticeable, but there are no special requirements regarding location, type size, or type face.

Whether a notice is provided at the time of application or when adverse action is taken, the notice must contain all the information required by paragraph (a)(2) except that—as noted above—creditors are permitted to give the statement of the action taken (for example, that a line of credit or a loan has been denied) orally or in writing. The information required includes the name and address of the creditor; a statement of the provisions of section 701(a) of the ECOA (the "ECOA notice"); and the name and address of the federal agency that administers compliance with respect to the creditor. Two model forms are provided in Appendix C to the regulation and are discussed below.

Oral notification for telephone applications

The Board recognizes that creditors that handle business credit applications by telephone (for example, when dealing with existing customers) might find it difficult to comply with the written notification requirements. Paragraph (a)(3)(i)(C) therefore provides that when an application for business credit is made solely by telephone, compliance with the notice requirements may be satisfied by an oral disclosure of the applicant's right to a statement of reasons for a denial of credit. In such instances, the creditor does not have to recite the information, normally required in a written notification, that is contained in the ECOA notice specified in § 202.9(b)(1).

An oral or written request for an extension of credit, if made in accordance with procedures established by a creditor for the type of credit requested, is an application under § 202.2(f). A request for an advance under an existing line of credit is not considered an "application" for credit and therefore it does not trigger the notice requirements of the regulation. *See* Regulation B, § 202.2(f) and accompanying commentary; *see also* § 202.2(c)(2).

Inquiries from potential applicants seeking credit information are not subject to the notice requirements. Such inquiries are, however, subject to § 202.5(a), which bars creditors from discouraging prospective applicants, on a prohibited basis, from making or pursuing an application.

Paragraph (a)(3)(ii)

The rules on notification in paragraph (a)(3)(ii), formerly part of § 202.3(d)(3), apply to credit applications by businesses with gross revenues exceeding $1 million and applications for all types of trade credit, credit incident to factoring, and similar business credit (regardless of the applicant's revenues). The Board has simplified the application of these rules for both applicants and creditors and

has provided greater uniformity among the timing requirements.

Applicants for business credit covered by paragraph (a)(3)(ii) must be notified of a credit denial, orally or in writing, within a reasonable time after the creditor receives a completed application. (Notice given in accordance with the timing requirements of § 202.9(a)(1) is deemed "reasonable" in all instances.) Under the revisions, applicants have up to 60 days after a denial (the same rule as for business credit below the revenue cutoff and for nonbusiness credit) to request written reasons for the denial. This changes the previous rule, which gave business credit applicants up to 30 days after a credit denial in which to submit a written request.

Section 202.12—Record Retention

Paragraph (b)—Preservation of Records

The revisions to § 202.12(b) implement section 703(a)(5) of the act, which requires creditors to retain records relating to business credit applications for no less than one year. Paragraphs (b)(1) through (4) are amended to distinguish between business credit records, which must be retained for 12 months, and nonbusiness credit records, which must be retained for 25 months.

The Board had proposed in July that records relating to business credit applicants be retained for 25 months. Similarly, records relating to applications from businesses with revenues above the cutoff and applications for trade and similar credit would have been subject to a 60-day retention period in all cases and to a 25-month retention period when an applicant submitted a written request that records be retained. The Board believed the ease of compliance associated with a more uniform timing rule for all types of credit records would benefit creditors.

Many commenters supported the Board's efforts to achieve consistency in timing rules. However, commercial lenders also described the disparity in the volume of data typically obtained to evaluate consumer and business applications, and objected to the incremental costs associated with storing business records (particularly on denied loans) for 25 rather than 12 months.

The final rule provides for an overall 12-month record retention period for business credit applications. The Board believes that compliance can be monitored adequately by reviewing transactions within this time period. The rules in § 202.12(b)(4), which require the longer retention of records by creditors that are the subject of enforcement procedures and investigations, will continue to preserve records where a creditor's actions come under scrutiny.

Paragraph (b)(5)—Special Rule for Certain Business Credit Applications

Previously, the regulation (in § 202.3(d)(3)) required creditors to retain records for 90 days after taking action on a business credit application. If during this time an applicant made a written request to have records kept, the creditor had to retain the records for 25 months. In the revised regulation, the substance of former § 202.3(d) on record retention has been modified and moved to § 202.12(b)(5). That provision now applies only to applications from businesses with gross revenues greater than $1 million, trade credit and similar business credit applications. If a creditor receives a written request for a statement of reasons from such applicants, the creditor is required both to give the reasons and also to retain records for 12 months. This eliminates the need for rejected business credit applicants to make two distinct requests regarding the credit decision and provides uniform rules. Absent a written request from an applicant, a creditor does not have to retain records beyond the initial 60-day period.

Appendix C—Sample Notification Forms

Appendix C to Regulation B contains sample notification forms. The Board is adding two sample notices—forms C–7 and C–8—for use in connection with applications for business credit. Form C–7 is a sample notice for giving a statement of reasons for a credit denial; the reasons for a credit denial contained in the form are illustrative only. Form C–8 is a sample disclosure of the *right* to a statement of reasons, of the type that would be given at the time of application.

A creditor may design its own notices or use all or a portion of the forms contained in the appendix. Proper use of the forms will satisfy the requirements of § 202.9(a)(2)(i) and § 202.9(a)(3), respectively, for applications for business credit.

(3) Economic Impact Statement

The Board's Division of Research and Statistics has prepared an economic impact statement on the revisions to Regulation B that contains the final Regulatory Flexibility Analysis. A copy may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–3245.

List of Subjects in 12 CFR 202

Banks, Banking, Civil rights, Consumer protection, Credit, Federal Reserve System, Marital status discrimination, Minority groups, Penalties, Sex discrimination, Women.

(4) Text of revisions

Pursuant to authority granted in 15 U.S.C. 1691b(a) of the ECOA, the Board amends 12 CFR part 202 as follows:

PART 202—[AMENDED]

1. The authority citation for part 202 is revised to read as follows:

Authority: 15 U.S.C. 1691–1691f.

2. Section 202.2 is amended by revising paragraph (g) to read as follows:

§ 202.2—Definitions.

* * * * *

(g) *Business credit* refers to extensions of credit primarily for business or commercial (including agricultural) purposes, but excluding extensions of credit of the types described in § 202.3 (a), (b), and (d).

* * * * *

§ 202.3—[Amended]

3. Section 202.3 is amended by removing paragraph (d) and redesignating paragraph (e) as paragraph (d).

4. Section 202.9 is amended by adding paragraph (a)(3). Paragraphs (a) (1) and (2) are republished to read as follows:

§ 202.9—Notifications.

(a) *Notification of action taken, ECOA notice, and statement of specific reasons*—(1) *When notification is required.* A creditor shall notify an applicant of action taken within:

(i) 30 days after receiving a completed application concerning the creditor's approval of, counteroffer to, or adverse action on the application;

(ii) 30 days after taking adverse action on an incomplete application, unless notice is provided in accordance with paragraph (c) of this section;

(iii) 30 days after taking adverse action on an existing account; or

(iv) 90 days after notifying the applicant of a counteroffer if the applicant does not expressly accept or use the credit offered.

(2) *Content of notification when adverse action is taken.* A notification given to an applicant when adverse action is taken shall be in writing and shall contain: a statement of the action taken; the name and address of the creditor; a statement of the provisions of

section 701(a) of the Act; the name and address of the Federal agency that administers compliance with respect to the creditor; and either:

(i) A statement of specific reasons for the action taken; or

(ii) A disclosure of the applicant's right to a statement of specific reasons within 30 days, if the statement is requested within 60 days of the creditor's notification. The disclosure shall include the name, address, and telephone number of the person or office from which the statement of reasons can be obtained. If the creditor chooses to provide the reasons orally, the creditor shall also disclose the applicant's right to have them confirmed in writing within 30 days of receiving a written request for confirmation from the applicant.

(3) *Notification to business credit applicants.* For business credit, a creditor shall comply with the requirements of this paragraph in the following manner:

(i) With regard to a business that had gross revenues of $1,000,000 or less in its preceding fiscal year (other than an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit), a creditor shall comply with paragraphs (a) (1) and (2) of this section, except that:

(A) The statement of the action taken may be given orally or in writing, when adverse action is taken;

(B) Disclosure of an applicant's right to a statement of reasons may be given at the time of application, instead of when adverse action is taken, provided the disclosure is in a form the applicant may retain and contains the information required by paragraph (a)(2)(ii) and the ECOA notice specified in paragraph (b)(1) of this section;

(C) For an application made solely by telephone, a creditor satisfies the requirements of this paragraph by an oral statement of the action taken and of the applicant's right to a statement of reasons for adverse action.

(ii) With regard to a business that had gross revenues in excess of $1,000,000 in its preceding fiscal year or an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit, a creditor shall:

(A) Notify the applicant, orally or in writing, within a reasonable time of the action taken; and

(B) Provide a written statement of the reasons for adverse action and the ECOA notice specified in paragraph (b)(1) of this section if the applicant makes a written request for the reasons within 60 days of being notified of the adverse action.

* * * * *

5. Section 202.12 is amended by revising paragraph (b)(1) introductory text and paragraphs (b)(2)–(4) and adding paragraph (b)(5) to read as follows:

§ 202.12—Record Retention.

* * * * *

(b) *Preservation of records*—(1) *Applications.* For 25 months (12 months for business credit) after the date that a creditor notifies an applicant of action taken on an application or of incompleteness, the creditor shall retain in original form or a copy thereof:

* * * * *

(2) *Existing accounts.* For 25 months (12 months for business credit) after the date that a creditor notifies an applicant of adverse action regarding an existing account, the creditor shall retain as to that account, in original form or a copy thereof:

(i) Any written or recorded information concerning the adverse action; and

(ii) Any written statement submitted by the applicant alleging a violation of the act or this regulation.

(3) *Other applications.* For 25 months (12 months for business credit) after the date that a creditor receives an application for which the creditor is not required to comply with the notification requirements of § 202.9, the creditor shall retain all written or recorded information in its possession concerning the applicant, including any notation of action taken.

(4) *Enforcement proceedings and investigations.* A creditor shall retain the information specified in this section beyond 25 months (12 months for business credit) if it has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation of the act or this regulation by the Attorney General of the United States or by an enforcement agency charged with monitoring that creditor's compliance with the act and this regulation, or if it has been served with notice of an action filed pursuant to section 706 of the Act and § 202.14 of this regulation. The creditor shall retain the information until final disposition of the matter, unless an earlier time is allowed by order of the agency or court.

(5) *Special rule for certain business credit applications.* With regard to a business with gross revenues in excess of $1,000,000 in its preceding fiscal year, or an extension of trade credit, credit incident to a factoring agreement or other similar types of business credit, the creditor shall retain records for at least 60 days after notifying the applicant of the action taken. If within that time period the applicant requests in writing the reasons for adverse action or that records be retained, the creditor shall retain records for 12 months.

* * * * *

5. Appendix C is amended by revising the first and last paragraph of the introduction, and by adding sample forms C–7 and C–8 to read as follows:

Appendix C—Sample Notification Forms

This appendix contains eight sample notification forms. Forms C–1 through C–4 are intended for use in notifying an applicant that adverse action has been taken on an application or account under § 202.9(a) (1) and (2)(i) of this regulation. Form C–5 is a notice of disclosure of the right to request specific reasons for adverse action under § 202.9(a) (1) and (2)(ii). For C–6 is designed for use in notifying an applicant, under § 202.9(c)(2), that an application is incomplete. Forms C–7 and C–8 are intended for use in connection with applications for business credit under § 202.9(a)(3).

* * * * *

A creditor may design its own notification forms or use all or a portion of the forms contained in this appendix. Proper use of Forms C–1 through C–4 will satisfy the requirements of § 202.9(a)(2)(i). Proper use of Forms C–5 and C–6 constitutes full compliance with § § 202.9(a)(2)(ii) and 202.9(c)(2), respectively. Proper use of Forms C–7 and C–8 will satisfy the requirements of § 202.9(a)(2) (i) and (ii), respectively, for applications for business credit.

* * * * *

FORM C–7—SAMPLE NOTICE OF ACTION TAKEN AND STATEMENT OF REASONS (BUSINESS CREDIT)

Creditor's name

Creditor's address

Date

Dear Applicant: Thank you for applying to us for credit. We have given your request careful consideration, and regret that we are unable to extend credit to you at this time for the following reasons:

(Insert appropriate reason, such as Value or type of collateral not sufficient Lack of established earnings record Slow or past due in trade or loan payments)

Sincerely,

Notice: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a

binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is [name and address as specified by the appropriate agency listed in appendix A].

FORM C–8—SAMPLE DISCLOSURE OF RIGHT TO REQUEST SPECIFIC REASONS FOR CREDIT DENIAL GIVEN AT TIME OF APPLICATION (BUSINESS CREDIT)

Creditor's name

Creditor's address

If your application for business credit is denied, you have the right to a written statement of the specific reasons for the denial. To obtain the statement, please contact [name, address and telephone number of the person or office from which the statement of reasons can be obtained] within 60 days from the date you are notified of our decision. We will send you a written statement of reasons for the denial within 30 days of receiving your request for the statement.

Notice: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is [name and address as specified by the appropriate agency listed in appendix A].

By order of the Board of Governors of the Federal Reserve System, dated December 1, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–28552 Filed 12–6–89; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–NM–78–AD; Amdt. 39–6417]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 series airplanes, which requires inspection for cracks of stringers 22 to 28 run-outs at fuselage frame 47, and repair, if necessary. This amendment is prompted by fatigue testing by the manufacturer, which revealed cracks on the run-outs of stringers 22 to 28 at the forward and rear internal side of the left-hand and right-hand frame 47. This condition, if not corrected, could lead to reduced structural capability of the fuselage and subsequent decompression of the airplane.

EFFECTIVE DATE: January 12, 1990.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airport Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Greg Holt, Standardization Branch, ANM–113; telephone (206) 431–1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Airbus Industrie Model A300 series airplanes, which requires inspection for cracks of stringers 22 to 28 run-outs at fuselage frame 47, and repair, if necessary, was published in the **Federal Register** on July 11, 1989 (54 FR 29050).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters questioned the need for the rule since the referenced service bulletin will become a part of the Significant Structural Inspection Program (SSIP). The FAA acknowledges that the service bulletin may be part of the SSIP; however, the SSIP document is under preparation and its date of issuance is not known. Once the SSIP is finalized and issued, the FAA may consider further, separate rulemaking to address it. Since some operators may currently have airplanes which are approaching the specified number of cycles where the actions described in the service bulletin are necessary, the FAA has determined that it is appropriate to proceed with this rulemaking to require those actions.

One commenter requested that the proposed compliance time of 750 landings for accomplishing the initial inspection be extended to be compatible with its "C" check maintenance visit. For the commenter, this would be equivalent to 1,660 landings. The details of the commenter's operations and total number of takeoffs and landings were not provided. The FAA does not concur with the request. The comments are made with regard to a specific operation and not in regards to the general effect of the AD on all affected operators. The FAA has determined that the compliance time, as proposed, represents the maximum interval of time (number of accumulated landings) allowable for the affected airplanes to continue to operate prior to the required inspections without compromising safety. Since maintenance schedules may vary from operator to operator, there would be no assurance that the inspection will be accomplished during that time. Under the provisions of paragraph E. of the rule, however, operators may apply for the approval of an alternate means of compliance or adjustment of the compliance time if sufficient justification is presented to the FAA.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 66 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $21,120.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the

regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 series airplanes, as listed in Airbus Industrie Service Bulletin A300–53–237, dated January 18, 1989, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural capability of the fuselage and subsequent decompression of the airplane, accomplish the following:

A. Prior to the accumulation of the number of landings indicated below or within 750 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals indicated below, perform either a detailed visual or eddy current inspection of stringers 22 to 28 run-outs at fuselage frame 47, in accordance with Airbus Industrie Service Bulletin A300–53–237, dated January 18, 1989.

1. For airplanes identified as Configuration 1 in the service bulletin, the initial inspection must be performed prior to the accumulation of 20,500 landings.

a. If the immediately preceding inspection was performed using the detailed visual method, the next inspection must be performed within 9,200 landings.

b. If the immediately preceding inspection was performed using the eddy current method, the next inspection must be performed within 18,400 landings.

2. For airplanes identified as Configuration 3 in the service bulletin, the initial inspection must be performed prior to the accumulation of 17,500 landings.

a. If the immediately preceding inspection was performed using the detailed visual method, the next inspection must be performed within 7,900 landings.

b. If the immediately preceding inspection was performed using the eddy current method, the next inspection must be performed within 15,800 landings.

3. For airplanes identified as Configuration 5 in the service bulletin, the initial inspection must be performed prior to the accumulation of 13,800 landings.

a. If the immediately preceding inspection was performed using the detailed visual method, the next inspection must be performed within 6,200 landings.

b. If the immediately preceding inspection was performed using the eddy current method, the next inspection must be performed within 12,400 landings.

4. For airplanes identified as Configuration 6 in the service bulletin, the initial inspection must be performed prior to the accumulation of 22,200 landings.

a. If the immediately preceding inspection was performed using the detailed visual method, the next inspection must be performed within 10,000 landings.

b. If the immediately preceding inspection was performed using the eddy current method, the next inspection must be performed within 20,100 landings.

B. If cracks found are less than or equal to 1 mm (.039 inch), repair prior to further flight and perform an eddy current inspection to ensure that the crack has been eliminated, in accordance with Airbus Industrie Service Bulletin A300–53–237, dated January 18, 1989. Repeat inspections at intervals indicated in paragraph A., above.

C. If cracks are greater than 1 mm (.039 inch), repair prior to further flight, in a manner approved by the Manager, Standardization Branch, ANM–113, Northwest Mountain Region. Repeat the inspections at intervals shown in paragraph A., above.

D. If no cracks are found, perform repetitive inspections at intervals shown in paragraph A., above.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective January 12, 1990.

Issued in Seattle, Washington, on November 28, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–28564 Filed 12–6–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 89–NM–139–AD; Amendment 39–6416]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which requires the replacement of aluminum brake control shafts with steel shafts. This amendment is prompted by reports of fractures of aluminum shafts on Boeing Model 757 series airplanes. The Model 767 is similar to the Model 757 in this area. This condition, if not corrected, could result in partial or complete loss of braking on one side of the airplane and, potentially, the complete loss of braking on the airplane.

EFFECTIVE DATE: January 12, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. David M. Herron, Systems and Equipment Branch, ANM–130S; telephone (206) 431–1949. Mailing address: FAA Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Boeing Model 767 series airplanes, which requires the replacement of aluminum brake control shafts with steel shafts, was published in the **Federal Register** on August 17, 1989 (54 FR 33936).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due

consideration has been given to the one comment received.

The Air Transport Association (ATA) of America expressed no objection to the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 152 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 67 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Cost of required parts is estimated to be $2,656 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $199,392.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 767 series airplanes listed in Boeing Service Bulletin 767-32-0081, dated April 27, 1989, certificated in any category. Compliance required within the next 750 landings after the effective date of this AD or prior to the accumulation of 15,000 landings, whichever occurs later, unless previously accomplished.

To prevent partial loss of braking and, potentially, the complete loss of braking, accomplish the following:

A. Replace aluminum brake metering valve module shafts with steel shafts, in accordance with Boeing Service Bulletin 767-32-0081 dated April 27, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective January 12, 1990.

Issued in Seattle, Washington, on November 28, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-28566 Filed 12-6-89; 8:45 am]

BILLING CODE 4910-03-M

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14 CFR Part 39

[Docket No. 89-NM-109-AD; Amendment 39-6415]

Airworthiness Directives; McDonnell Douglas Model DC-9 -15F, -32F, -33F, and -34F Series Airplanes, Including C-9A and C-9B (Military) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to McDonnell Douglas Model DC-9 series airplanes, which currently requires certain inspection and modifications of the main cargo door assembly to prevent inadvertent opening of the main cargo door in flight. This amendment requires installation of a main cargo door hydraulic isolation valve; installation of an additional, and modification of the existing, door-open indicating system; installation of a main cargo door lock pin viewing window; installation of a main cargo door vent system; installation of a vent door-open indicating circuit; installation of a main cargo door hinge pin retainer; and modification of the main cargo door latch operating mechanism. This amendment is prompted by further review of the main cargo door design and operation by the FAA and constitutes terminating action for the existing AD.

EFFECTIVE DATE: Effective January 13, 1990.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California, Attention: Director of Publications, C1-L00 (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Robert T. Razzeto, Aerospace Engineer, Systems and Equipment Branch, ANM-131L, FAA, Northwest Mountain Region, 3229 East Spring Street, Long Beach, California 90806; telephone (213) 988-5355.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by revising AD 89-11-02, Amendment 39-6216 (54 FR 21; 164: May 18, 1989), applicable to Model DC-9 -15F, -32F, -33F, and -34F series airplanes, including C-9A and C-9B (Military) airplanes, to require inspection and modification of the main cargo door hydraulic control valve and control panel access door, visual inspection of the main cargo door to ensure the door is locked prior to each takeoff, inspection and modification of the exterior markings on the main cargo door, and functional checks of the door-open indicating system, was published in the **Federal Register** on August 2, 1989 (54 FR 31847).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The Air Transport Association (ATA) of America submitted comments on behalf of one member. The member requested that the proposed compliance time of one year for modification to add a main cargo door hinge pin retainer and a vent door-open indicating system be changed to be one year after parts and service bulletins become available. This commenter points out that the service bulletins are not yet available. The FAA does not concur with the request. McDonnell Douglas has stated that parts and service bulletins will be available for installation on in-service Model DC-9 airplanes by December 1989. Therefore, in light of the effective date of this AD and the schedule for parts availability, the FAA has determined that extension of the compliance time is inappropriate and not justified.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 86 Model DC-9 series airplanes of the affected design in the worldwide fleet. It is estimated that 75 airplanes of U.S. registry will be affected by this AD, that it will take approximately 180 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The cost of the required modification parts is estimated to be $80,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,540,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by amending Amendment 39-6216 (54 FR 21416; May 18, 1989), AD 89-11-02, as follows:

McDonnell Douglas: Applies to Model DC-9-15F, -32F, -33F, and -34F, including C-9A and C-9B (Military) series airplanes, as listed in McDonnell Douglas DC-9 Service Bulletin 52-70, dated January 22, 1969; Service Bulletin 52-87, dated June 7, 1974; Service Bulletin 52-91, Revision 2, dated August 12, 1976; Service Bulletin 52-92, Revision 2, dated November 21, 1985; Service Bulletin 52-93, Revision 1, dated May 3, 1978; and Service Bulletin 52-100, dated September 30, 1976; certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent inadvertent opening of the main cargo door in flight, a condition which could result in loss of pressurization and control of the aircraft, accomplish the following:

A. Within the next 14 days after May 30, 1989 (the effective date of Amendment 39-6216), ensure that the main cargo door is closed, latched, and locked prior to takeoff following each operation of the door, in accordance with the procedures specified below. The procedures required by this paragraph must be accomplished by qualified and trained personnel, and the training program must be approved by the FAA Principal Maintenance Inspector (PMI). The method for documentation of compliance must also be approved by the FAA PMI.

1. From the outside of the airplane, perform a visual check of the exterior manual latch controls to ensure that the latch actuating socket and the lock pin handle are in the LOCK position; or

2. Perform a visual check of the latches and lock pins, located on the inside of the main cargo door, to ensure that the latches are in the closed position and the lock pins are in the locked position.

3. Prior to taxi, communicate to the flight crew that the main cargo door has been closed, latched, locked, and checked.

B. Unless the modifications described in paragraph F.2. of this AD have previously been accomplished, within the next 30 days after May 30, 1989 (the effective date of Amendment 39-6216), and thereafter at intervals not to exceed 45 days, conduct a main cargo door-open indicating system functional check in accordance with Paragraph 1. McDonnell Douglas All Operator's Letter (AOL) 9-799, dated April 16, 1974. If the main cargo door-open indicating system functional check is not successfully accomplished, repair the main cargo door-open indicating system prior to further flight, in accordance with AOL 9-799

C. Within the next 30 days after May 30, 1989 (the effective date of Amendment 39-6216), and thereafter at intervals not to exceed 45 days, inspect and modify the main cargo door control panel access door, spacer block, and "T" handle stowage clip, in accordance with McDonnell Douglas AOL 9-799A, dated January 22, 1975, and AOL 9-799, dated April 16, 1974, paragraph 2.A. In addition, inspect the control panel access door to ensure the door can be secured in the down and locked position. If the control panel access door cannot be secured in the down and locked position, repair prior to further flight.

D. Unless previously accomplished in accordance with Paragraph (2) of AD 75-03-03, Amendment 39-2076, within the next 30 days after May 30, 1989 (the effective date of Amendment 39-6216), verify that the main cargo door hydraulic control valve shaft operates freely, without binding, between the operate neutral and neutral lock positions. This shall be accomplished by opening the main cargo door hydraulic control valve control panel access door; raising the "T" handle, Douglas P/N 4777888-1; and pulling the "T" handle vertically upward to its maximum travel (operate neutral position). When the vertical force on the "T" handle is relieved, the main cargo door hydraulic control valve shaft should return to the neutral lock (down) position without binding. Replace the main cargo door hydraulic control valve, Douglas P/N 5919985-5001, prior to further flight, if the valve shaft does not return freely to the neutral lock position.

E. Within the next 30 days after May 30, 1989 (the effective date of Amendment 39-6216), inspect the main cargo door exterior lock pin handle and latch actuating socket markings in accordance with Paragraph 4.C. of McDonnell Douglas AOL 9-799, dated April 16, 1974; and McDonnell Douglas Drawings 7910689, Revision P, dated November 29, 1973, Item Numbers 16 and 18 (DC-9-15F), or Drawing 7910868, Revision AK, dated January 21, 1977, Item Numbers 16 and 18 (DC-9-32F, -33F, and -34F). If the exterior markings are not correct, modify in accordance with the above specified McDonnell Douglas drawings prior to further flight.

F. Within the next six months after the effective date of this amendment, accomplish the following:

1. Install a main cargo door hydraulic isolation valve in accordance with McDonnell Douglas Service Bulletin 52-91, Revision 2, dated August 12, 1976; and

2. Install a new main cargo door-open indicating circuit, revise the existing main

cargo door-open indicating circuit, and install a main cargo door-open indicating system test circuit, in accordance with McDonnell Douglas Service Bulletin 52–92, Revision 2, dated November 21, 1985. Compliance with the requirements of paragraph B., above, may be terminated upon the accomplishment of the requirements of this paragraph.

G. Within one year after the effective date of this amendment, accomplish the following:

1. Install a main cargo door lock pin viewing window in accordance with McDonnell Douglas Service Bulletin 52–93, Revision 1, dated May 3, 1978; and

2. Install a main cargo door vent system in accordance with McDonnell Douglas Service Bulletin 52–100, dated September 30, 1976; and

3. Modify the main cargo door latch operating mechanism in accordance with McDonnell Douglas Service Bulletins 52–70, dated January 22, 1969, and 52–87, dated June 7, 1974; and

4. Install a main cargo door hinge pin retainer on each end of the hinge, which is approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, that will retain the hinge pin in the event of a structural failure of the pin; and

5. Install a vent door-open indicating system, which is approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, that will signal the appropriate flight crew member when the main cargo door vent door is not fully closed and latched.

H. Compliance with the requirements of paragraphs F., G.1., G.2., G.3., and G.5., above, constitutes terminating action for the initial and repetitive inspections required by paragraphs A., B., and C., of this AD.

I. The checks and modifications specified in paragraphs A. through G. of this AD are not required on airplanes which have the main cargo door deactivated and secured in the closed and locked position, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, until that door is reactivated.

J. Compliance with the requirements of this AD constitutes terminating action for the requirements of AD 84–23–02 for Model DC–9 series airplanes only.

Note: The requirements of AD 84–23–02 relating to Model DC–8 series airplanes are not affected by this AD.

K. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

L. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes unpressurized to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California, Attention: Director of Publications, C1–L00 (54–60). This information may be examined at FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment amends Amendment 39–6215, AD 89–11–02.

This amendment becomes effective January 13, 1990.

Issued in Seattle, Washington, on November 28, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–28567 Filed 12–6–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 89–NM–73–AD; Amendment 39–6418]

Airworthiness Directives; McDonnell Douglas Model DC–9–10 Through –80 Series Airplanes, Model MD–88 Airplanes, and C–9 (Military) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Model DC–9–10 through –80 series, Model MD–88, and C–9 (Military) series airplanes, which requires inspection and replacement or repair, as necessary, of the rudder control sector. This amendment is prompted by reports of cracks at the cotter pin hole near the ball end of the rudder control cable. This condition, if not corrected, could result in disengagement of the rudder cable and loss of rudder control.

EFFECTIVE DATE: January 13, 1990.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Business Unit Manager of Publications, CI–HCO (54–60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Lee, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (213) 988–5325.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to McDonnell Douglas Model DC–9–10 through –80 series, Model MD–88, and C–9 (Military) series airplanes, which requires an inspection of the rudder sector and repair or replacement, as necessary, was published in the **Federal Register** on June 30, 1989 (54 FR 27652).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Four commenters suggested that the proposed compliance time for the inspection be extended to the "C" check maintenance interval, which is 15 months for most major operators. The commenters indicated that, although the required inspection could readily be accomplished during an "overnight hold," operators would need to accomplish the inspection at a main base since, if cracks were found, sufficient time and equipment would be available at the main base after inspection to perform the necessary repairs. The FAA disagrees. Due to the uncertain nature of crack growth in that part of the rudder control sector, the FAA has determined that the compliance period of 60 days is appropriate. However, as explained below, the final rule has been revised to provide for a temporary repair to enable operators to reach a main base for the accomplishment of a permanent repair or replacement.

Two commenters suggested that the manufacturer identify a block of airplanes that are most susceptible to cracking, and requested that a compliance period of 60 days be imposed on those affected airplanes only. The remainder of the airplanes should be subject to a 15-month compliance period. The FAA does not concur, since the manufacturer has not been able to conclusively identify such a block of airplanes.

Three commenters suggested that a temporary repair be allowed on airplanes found with a cracked rudder control sector. The FAA agrees. The final rule has been revised to permit a temporary repair if cracks are found or if a wall thickness of .020 inch or less is

found; however, a permanent repair or replacement must then be performed within 6 months or 1,000 landings, whichever occurs earlier.

The economic analysis paragraph, below, has been revised to indicate that one-half manhour, rather than 8 manhours, would be required to accomplish the required actions (that is, inspection of the rudder control sector). The Notice inadvertently included additional manhours necessary to accomplish "on condition" replacement of the sector.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the rule.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Number 2120–0056.

There are approximately 1,431 Model DC–9 series airplanes of the affected design in the worldwide fleet. It is estimated that 861 airplanes of U.S. registry will be affected by this AD, that it will take approximately one-half manhour per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $17,220.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC–9–10 through–80, Model MD88, and C–9 (Military) series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To preclude failure of the rudder control sector, accomplish the following:

A. Within 60 days after the effective date of this airworthiness directive (AD), visually inspect the rudder control sector for cracks and acceptable wall thickness, in accordance with Figure 2 of McDonnell Douglas Alert Service Bulletin A27–302, dated February 17, 1989.

1. If no cracks are found and the wall thickness is more than .020 inch, no further action is required.

2. If cracks are found or if a wall thickness of .020 inch or less is found, prior to further flight, perform either a permanent or temporary repair or replace the rudder control sector, in accordance with the accomplishment instructions of McDonnell Douglas Service Bulletin A27–302, dated February 17, 1989.

3. If a temporary repair is performed, replace or permanently repair the rudder control sector within 6 months or 1,000 landings, whichever occurs earlier, in accordance with McDonnell Douglas Service Bulletin A27–302, dated February 17, 1989.

B. Within 15 days after the inspection required by paragraph A., above, submit a report of findings, positive or negative, to the Los Angeles Aircraft Certification Office, Attention: ANM–108L, FAA, Northwest Mountain Region, 3229 East Spring Street, Long Beach, California 90806–2425.

C. An alternate means of compliance or adjustment of the compliance times, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C2–165 (54–60). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment becomes effective January 13, 1990.

Issued in Seattle, Washington, on November 28, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–28565 Filed 12–6–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 89–ASW–47]

Revision of Transition Area; Oklahoma, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Oklahoma, OK, Transition Area by making an editorial change to the existing legal description. The existing legal description of the Oklahoma, OK, Transition Area excludes that portion within R–5601A. Based on a special airspace review, R–5601A is being redesigned in order to lessen the burden on the flying public. To correctly reflect the change, the legal description should state that the Oklahoma, OK, Transition Area should exclude that portion witnin "R–5601" and not just in "R–5601A."

EFFECTIVE DATE: 0901 U.T.C., March 8, 1990.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone (817) 624–5561.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 71 of the Federal Aviation Regulations makes an editorial change to the existing legal description of the Oklahoma, OK, Transition Area. The existing legal description of the Oklahoma, OK, Transition Area excludes that portion within R-5601A. Based on a special airspace review, R-5601A is being redesigned in order to lessen the burden on the flying public. To correctly reflect the change, the legal description should state that the Oklahoma, OK, Transition Area excludes that portion within "R-5601" and not just in "R-5601A." I find that notice and public procedures under 5 U.S.C. 553(b) are unnecessary because this action is a minor editorial amendment in which the public would not be particularly interested. Section 73.51 of part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Oklahoma, OK [Revised]

That airspace extending upward from 1,200 feet above the surface within the boundary of the State of Oklahoma, excluding that portion within R-5601.

Issued in Fort Worth, TX, on November 13, 1989.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 89-28563 Filed 12-6-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 24, 132, 141, 142 and 143

[T.D. 89-104]

RIN 1515-AA72

Customs Regulations Amendments Concerning Statement Processing and Automated Clearinghouse

AGENCY: U.S Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customers Regulations to provide users of Customs Automated Broker Interface (ABI) with the option of paying their entry/entry summaries and entry summaries by the statement processing method. Statement processing allows entry/entry summaries and entry summaries to be grouped and payment made for the group with a single payment. The document also establishes Automated Clearinghouse (ACH), an electronic payment mechanism, as the preferred method of payment of Customs duties, taxes and fees relative to ABI statements.

Further, the document provides an exception to the requirement that for entries of quota-class merchandise, estimated duties must be attached to the entry summary documentation. The document states that if an ABI participant chooses to do so, entries of quota-class merchandise and other special classes of merchandise designated by Customs Headquarters can be paid through statement processing and ACH if the preponderance of the ABI filer's non-special class entry summaries are also processed under statement processing and ACH. If an ABI participant opts to use statement processing for quota-class entries and the preponderance of his non-special class entries, he must use ACH. Further, quota status and quota priority can be acquired without estimated duties being attached to entry/entry summary documentation if statement processing and ACH are used.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: James Childress, Commercial System Division (202-343-6584).

SUPPLEMENTARY INFORMATION:

Background

Historically, Customs has generally required that estimated duties be attached to the submission of entry documentation or entry summary documentation. This payment was usually made by an individual check covering the entry or the entry summary. Through Customs Automated Commercial System (ACS), Customs has developed a method known as statement processing which allow one payment to cover multiple entry summaries. Further, Customs has developed an enhancement to statement processing which no longer requires that the estimated duties be attached to the submission of entry summary documentation. The enhancement is known as Automated Clearinghouse (ACH); ACH is an electronic payment mechanism. A filter who is on Customs ABI may transmit his entry data to Customs through the ABI, may elect to use statement processing, and use ACH to effect payment. The entry documentation and ACH payment authorization must be submitted within 10 working days after entry of the merchandise.

Customs published a document in the **Federal Register** (54 FR 10019) on March 9, 1989, proposing amendments to the Customs Regulations providing: (1) For the voluntary use by ABI participants of statement processing; (2) that all ABI participants using statement processing must pay their statements through the use of the ACH electronic payment mechanism; (3) that the payment of estimated duties regarding entry/entry summaries for special classes of merchandise, consisting of quota-class merchandise and other classes designated by Customs Headquarters, be allowed through ABI statement processing if the preponderance of the ABI participant's non-special class entry summaries are also processed under statement processing; and (4) that quota priority and status could be acquired without estimated duties being attached to the entry/entry summary documentation if statement processing and ACH are used.

Twenty comments were received in response to the proposal. Most commenters were in favor of the general concept set forth in the proposed rulemaking. However, there were several concerns. A discussion of the comments and our responses follows.

Analysis of Comments

Comments: Most commenters were opposed to the requirement that if an ABI participant uses statement processing, the ABI participant must use ACH.

Response: In view of the negative comments from the trade about mandatory ACH payment of all statements, Customs has decided to permit check or cash payment for a statement which does not include entries for quota-class merchandise. Customs has decided, however, that ABI participants who wish to gain release of quota-class and/or other special classes of merchandise without being required to attach estimated duties to the entry/entry summary documentation must use statement processing and the ACH method of payment for these transactions and for the largest portion of their Customs transactions. (See later discussion).

The incentive of offering deferred payment for entries of quota and other special class merchandise if payment is made by ACH and other marketing methods will be employed by Customs to encourage importers and brokers to adopt the ACH method of payment. Customs is committed to establishing ACH as the preferred method of payment.

Comment: Several comments received from individual brokers and trade associations requested that Customs maintain the option that broker's clients can pay Customs charges through the broker directly from their own accounts. The comments indicated that Customs should provide this option either for those clients who might elect to use ACH and have statement payments debited directly from their accounts, or for those clients who do not desire to use ACH, but currently provide the broker with a check payable to the "U.S. Customs Service" for their duties, taxes and fees that appear on an ABI statement.

Response: We agree that a broker's client should maintain the option to pay Customs directly through his own account. When a client elects to use the ACH method and have the funds debited directly from his own account, the client would be required to provide directly to Customs the bank transit routing number and the bank account number for each of his accounts from which ACH payments could be electronically debited. Customs would then assign a unique payer's unit number to each of his accounts and provide the assigned unit number(s) directly to the client and the Treasury-designated ACH processor. The client would then provide the appropriate payer's unit number to his broker to pay his statements through ABI. The funds would then be electronically withdrawn directly from the client's account.

Although ACH is the preferred payment method for ABI statements, it will not be possible for all entry filers in all instances. Therefore, Customs will continue to permit entry filers to pay by check payable to the "U.S. Customs Service" for duties, taxes, and fees, according to existing Customs regulations. However, it should be recognized that a particular statement payment must be accomplished entirely through ACH or completely by conventional method (check, cash, etc.). A mixing of payment methods for a single statement will not be accepted.

Comment: Some commenters were opposed to the proposed rule stating that the statement date must be the payment date. It was believed by certain commenters that the internal processes of a broker or importer may require early generation of the preliminary statement to allow the staff sufficient time to audit the proposed payments and perform any necessary amendments to the statement to ensure that proper payment can be tendered by the tenth working day.

Response: Customs recognizes the necessity of having adequate time to perform internal verification of proposed duty payments. Therefore, Customs has removed the requirement that statement date will be payment date. It should be noted, however, that the principal listed on the statement will be responsible for ensuring that the statement payment is timely made (that all related statement entries will be satisfied within 10 working days from the date of entry).

Comment: Several commenters stated that there should be an expedited administrative refund process for those ACH transactions which may be accepted over and above any required statement payment. These commenters stated that the administrative refund process should provide for refunding without need for the formal protest process and without any requirement for an entry-by-entry liquidation or reliquidation process; and any refund amount should be electronically provided to the payer.

Response: Customs agrees that a payer whose account is overdrawn directly as a result of an error by Customs or the Treasury-designated ACH processor should be entitled to immediate administrative relief without the need for formal protest action or liquidation or reliquidation action. Customs has the authority to provide such relief pursuant to 19 U.S.C. 1520(a)(4). However, because Customs believes that such errors will occur on a very isolated basis, administrative relief can be handled on a case-by-case basis without a formal provision. The reasons Customs believes that errors will be rare are twofold. First, the ACH payment process will be accomplished through ABI on a computer-to-computer basis with no manual intervention. Secondly, before an ACH payment authorization transaction is accepted for subsequent transmission to the Treasury-designated ACH processor, a strict set of edits must be completely passed relative to statement data and amount; if the ACH payment authorization is not error-free, it will not be accepted by Customs for subsequent transmission to the ACH processor. If an error does occur, Customs should be notified promptly so that immediate action can be instituted to ascertain the cause and take prompt action to satisfy the payer. It should be recognized that if the error was a result of an error at the payer's bank without culpability on the part of Customs or the Treasury-designated processor, Customs will not be responsible for the refund; the matter would have to be resolved with the payer's bank.

Comment: Several commenters were concerned with the system's security. There were concerns presented regarding protection against outside tampering with the system to prevent conversion of funds to outside personal accounts. In addition, assurances were sought that ACH withdrawals would be made only for specific unpaid ABI statements and that Customs would debit the correct account for the ACH transaction.

Response: Although Customs cannot provide a 100 percent guarantee that a violation of the system could not occur, every precaution has been taken to avoid this possibility. The existing levels of security required to access both the Customs and bank system have been in place and operational for several years without experiencing any outside tampering.

Furthermore, the ACH authorization transaction input through ABI for statement payment and the resulting transmission to the Treasury-designated ACH processor contain no reference to the specific bank or bank account information. Instead, the Customs-assigned unique payer's unit number is

used which is identifiable only to the ACH processor as to bank and bank account. The Customs system does not maintain a file which would provide any person inside or outside of Customs with accessibility to payer bank or bank account information. Also, the ACH processor system requires multiple levels of security to be satisfied before access can be gained to that system. There is no method available to gain access to the files of the ACH processor through Customs to obtain information regarding bank and bank account information.

The ACH electronic payment mechanism is initiated based on acceptance of a payment authorization transaction being received through ABI from the payer. Customs will not generate an internal transaction on its own initiative to accomplish an ACH payment. Customs acceptance of the ACH payment authorization is dependent on multiple edits being satisfied. Among these will be that the payer unit number provided in the transaction is eligible to accomplish payment of the statement number indicated in the transaction. Also, the statement number provided must be unpaid and the amount provided in the payment transaction must correspond exactly to the unpaid amount of the statement number provided. If any of these validations are not met, the transaction is not accepted by Customs for payment; the initiator of the ABI transaction is electronically notified as to what errors exist with the transaction. Most importantly, the unaccepted payment authorization will not be passed to the Treasury-designated ACH processor for funds withdrawal. Only error-free transactions are given to the ACH processor for eventual electronic withdrawal of funds.

The actual electronic withdrawal of funds from the payer's account will be accomplished through the Treasury-designated ACH processor. The bank and account from which funds are withdrawn will be dictated by the payer unit number provided in the accepted ABI payment authorization transaction. It is emphasized that it is the responsibility of the payer to ensure that all bank account information provided to Customs is correct and that the correct payer unit number is utilized in each ACH payment authorization transaction. If payers take this responsibility seriously, there is little need for concern regarding the correct accounts being debited for ACH transactions.

Comment: Some commenters were concerned that Customs may reduce the float period as soon as all ABI brokers are on ACH.

Response: Pursuant to this final rule, ACH is the payment method which should be utilized whenever possible by those ABI participants who use statement processing. Initially, Customs will electronically debit, through the Treasury-designated ACH processor, the payor's account on the second business day following the accepted payment date provided in the ABI acceptance notification record. However, it should be noted that the Treasury Department has reserved the right to review the effectiveness of ACH after a one year operational period. As a result of this review, Treasury could request changes to the program including a reduction in the float period.

Comment: Because the electronic ACH payment will not generate a cancelled check document, some commenters stated that the regulations should identify the document that an ACH user can present to substantiate that Customs duties for statement entries have been paid through an ACH transaction.

Response: The ABI statement process generates a final statement only after complete payment of the statement has been processed through the Customs financial system, either through an ABI–ACH transaction or by a Customs cashier entering a check or cash payment to the system. Therefore, the final statement could be utilized as evidence that statement payment has occurred through an ACH transaction in lieu of presenting a cancelled check. Section 24.25(c)(4), Customs Regulations, will be revised to indicate this.

Comment: Some commenters stated that Customs should provide a definition of the term "preponderance" in relation to its use in the requirement that entries of quota-class merchandise and other special classes of merchandise designated by Customs Headquarters can be paid through statement processing and ACH if the preponderance of the ABI filer's non-special class entry summaries are also processed under statement processing and ACH.

Response: The term "preponderance" was intended by Customs to mean the largest possible portion of a filer's non-special class entry summaries eligible for statement processing. To clarify the provision, "largest possible portion" is used in the final rule. All entries are eligible for statement processing except vessel repair entries and warehouse withdrawals. Customs does not wish to provide an exact percentage of eligible non-special class entry summaries that must be handled through statement processing and paid via the ACH payment mechanism, because Customs recognizes that there are valid business reasons which brokers may have for not using ACH in certain circumstances and the number of times that there are valid business reasons can vary from broker to broker. An example of a valid business reason why a broker has not paid an eligible entry summary through ACH is that the importer paid the broker with a check payable to " U.S. Customs." Because Customs does expect brokers who are using statement processing and ACH for quota and special class entries to use statement processing and ACH for the largest possible portion of their non-special class entries, a filer who excludes or deletes entries from the statement process and ACH should be prepared to articulate a sound business reason why these exclusions or deletions have occurred. While Customs will not in the normal course of events ask a filer to articulate his reasons for not using statement processing and ACH for a particular entry, if Customs believes that a broker is taking advantage of ACH for his quota-class entries and not using statement processing and ACH for the largest possible portion of his eligible non-special class entries, the ABI participant may be consulted by Customs as to why he has not used statement processing and ACH for certain entries. If Customs is not satisfied, after such consultation, that there were sound business reasons for the exclusion or deletion of non-special class entries, Customs may disqualify the participant from using statement processing/ACH for quota-class entries.

Comment: One commenter questioned why ACH is available only to ABI participants.

Response: The decision to make ACH available only to ABI participants was made by Customs. From a Customs standpoint, the effectiveness of the ACH payment process is dependent on accurate payment data being accepted through a controlled automated environment. The immediate method available which would provide Customs with the most effective means for operation of the ACH payment process is ABI. The ABI provides Customs with an immediate interface with the trade community which incorporates edits and validations to ensure accuracy and correctness of individual entry amounts. This existing interface can be readily adapted by Customs to accept a payment authorization and edit for correctness and provide data back to the payer indicating acceptance or error.

Additionally, the ABI format provides Customs levels of security which have been operational for some time without experiencing outside tampering which ensures protection of the ACH transaction from outside manipulation.

Comment: One commenter asked about the consequences of not accomplishing the ACH transaction timely because either Customs or the filer was experiencing computer difficulties.

Response: Customs is currently developing a policy of how it should handle the unavailability of processing due to a Customs computer problem. The goal of the policy Customs is designing is to provide operational guidelines in those instances of temporary Customs computer or communications problems. Where computer problems prevent the timely transmission of ACH payments, the option to bring check or cash payment to the Customs statement processing location is generally still available. As a general rule, the allowance of additional time to file ABI statement entries due to downtime of a filer's system should be granted. The allowance of additional time to file or pay through ACH due to filer computer breakdown is at the sole discretion of the District Director. Generally, every effort will be made to alleviate the risk of potential penalty action if Customs is timely notified of such problems.

Comment: Several commenters were concerned about the government having direct access to their bank accounts.

Response: Although the participating broker or importer would be required to provide their bank and bank account number to Customs, the broker or importer will dictate when and for what amount an electronic withdrawal will occur. Customs does not maintain an automatic access to the account.

The process to initiate electronic withdrawals through the Treasury-designated ACH processor is started only when Customs receives through ABI a payment authorization for a particular statement at a specific amount using a valid payer's unit number. If such a transaction is not received or is not accepted error-free, no transaction will be passed to the Treasury-designated ACH processor for electronic withdrawal. There is no manual intervention by Customs; only the data accepted error-free will be passed to the ACH processor. The ACH payment accepted will be applied only to the Customs duties owed on the entries which make up the specified statement.

Conclusion

After careful consideration of all the comments received and further review of the matter, it has been determined that the amendments with the modifications discussed above should be adopted. In addition, Customs has decided to eliminate the requirement of performing a freeze function on all preliminary statements which are to be paid through ACH. The "freeze" procedure was installed as part of the pilot test process to ensure that the broker payment amount transmitted directly to the Treasury-designated ACH processor would ultimately agree with the actual Customs preliminary statement amount. This procedure is no longer necessary under the ABI-ACH payment process because the ACH payment authorization will be transmitted directly to Customs via ABI and required to pass strict edits to ensure that statement data and amount are in complete agreement with existing Customs data before the payment authorization is accepted.

Inapplicability of Delayed Effective Date

Because this amendment neither imposes any additional burdens on, or takes away any existing rights or privileges from, the public, pursuant to 5 U.S.C. 553(d)(2), a delayed effective date is not required.

Executive Order

This document does not meet the criteria for a "major rule" as defined in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork and Reduction Act (44 U.S.C. 3504 (h)) under control number 1515–0167. The estimated average burden asssociated with this collection of information is 15 minutes per respondent or recordkeeper, depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the U.S. Customs Service, Paperwork Management Branch, Washington, DC 20229, or the Office of Management and Budget, Paperwork Reduction Project (1515–0167), Washington, DC 20503.

Drafting Information

The principal author of this document was Harold M. Singer, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Imports, Taxes, Wages.

19 CFR Part 132

Customs duties and inspection, Imports, Quotas.

19 CFR Parts 141, 142 and 143

Customs duties and inspection, Entry, Imports.

Amendments to the Regulations

Parts 24, 132, 141, 142 and 143, Customs Regulations (19 CFR parts 24, 132, 141, 142 and 143) are amended as set forth below.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general and relevant specific authority citation for part 24, CUSTOMS REGULATIONS (19 CFR part 24), continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624; 31 U.S.C. 9701; Public Law 99–662.

§ 24.1 also issued under 19 U.S.C. 197, 198, 1648.

2. Section 24.1(a) is amended by republishing the introductory text and by adding a paragraph (8) to read as follows:

§ 24.1 Collection of customs duties, taxes and other charges.

(a) Except as provided in paragraph (b) of this section, the following procedure shall be observed in the collection of Customs duties, taxes, and other charges (see § 111.29(b) and 141.1(b) of this chapter): * * *

(8) Participants in the Automated Broker Interface may use statement processing as described in § 24.25 of this part. Statement processing allows entry/entry summaries and entry summaries to be grouped by either importer or by filer, and allows payment of related duties, taxes and fees by a single payment, rather than by individual

checks for each entry. The preferred method of payment for users of statement processing is by Automated Clearinghouse.

* * * * *

3. Part 24 is amended by adding a new § 24.25 to read as follows:

§ 24.25 Statement processing and Automated Clearinghouse.

(a) *Description.* Statement processing is a voluntary automated program for participants in the Automated Broker Interface (ABI), allowing the grouping of entry/entry summaries and entry summaries on a daily basis. The related duties, taxes and fees may be paid with a single payment. The preferred method of payment is by Automated Clearinghouse (ACH), except where the importer of record has provided a separate check payable to the "U.S. Customs Service" for Customs charges (duties, taxes, or other debts owed Customs (see § 111.29(b) of this chapter)). A particular statement payment must be accomplished entirely through ACH or completely by check or cash. A mixing of payment methods for a single statement will not be accepted. ACH is an arrangement in which the filer electronically provides payment authorization for the Treasury-designated ACH processor to perform an electronic debit to the payer's bank account. The payment amount will then be automatically credited to the account of the Department of the Treasury. If a filer chooses to use statement processing for entries of quota-class merchandise and other special classes of merchandise designated by Customs Headquarters under § 142.13(c) of this chapter, he must also use statement processing as a normal course of business for the largest possible portion (see § 24.25(d)) of his eligible non-special class entries; further, he must use the ACH payment mechanism to pay all his ABI statements containing entries for quota-class merchandise. In no circumstance will check or cash be acceptable for payment of ABI statements containing entries for quota-class merchandise.

(b) *How to elect participation*—(1) *Statement processing.* An ABI filer must notify Customs in writing of the intention to utilize statement processing.

(2) *Automated Clearinghouse.* If an ABI filer pays his statements through ACH, rather than by check, he must provide to Customs the bank routing number and the bank account number for each account from which ACH payments are to be electronically debited. Upon the determination by Customs that the ABI filer has the necessary software to participate and otherwise qualifies to participate in ACH, Customs shall assign a unique identifying payer's unit number to the participant and the Treasury-designated ACH processor. This unique number assigned by Customs will alert the ACH processor as to which bank and account to issue the electronic debit. If a client of a ABI filer opts to pay Customs charges from his own account through an ABI filer, the client must provide directly to Customs the bank transit routing number and the bank account number for each of his accounts from which ACH payments can be electronically debited. Customs will then assign a unique payer's unit number to each of his accounts and provide the assigned unit number directly to the client and the Treasury-designated ACH processor. The client would then provide the appropriate payer's unit number to his broker to pay his statements through ABI. It is the responsibility of the participant to ensure that all bank account information is accurate and that the correct unique payer's unit number is utilized for each ACH transaction.

(c) *Procedure for filer.* (1) The filer shall transmit entry/entry summary and entry summary data through ABI indicating whether payment for a particular entry summary will be by individual check or by using statement processing. If statement processing is indicated, the filer shall designate whether the entry summary is to be grouped by importer or broker, and shall provide a valid scheduled statement date (within 10 days of entry, but not a Saturday, Sunday or holiday).

(2) Customs shall provide a preliminary statement to the ABI filer on the scheduled statement date. The preliminary statement shall contain all entry/entry summaries and entry summaries scheduled for that statement date. The preliminary statement shall be printed by the filer, who will review the statement entries and the statement totals, assemble the required entry summaries as listed in the statement, and present them to Customs with the preliminary statement. This presentation must be made within 10 working days after entry of the merchandise. If a filer elects to perform deletions from the preliminary statement (other than items related to special classes of merchandise provided for in § 142.13(c) of this chaper), the filer shall notify Customs in such manner as designated by Customs Headquarters. Any entry number deleted from a statement may be paid by an individual check or scheduled for another statement by transmitting the entry summary data through ABI with a future payment date.

(3) The ABI filer using statement processing is responsible for ensuring that payment is made within 10 days of the entry of the related merchandise.

(4) When payments are made through ACH, Customs shall, upon acceptance of the ACH payment authorization, identify the preliminary statement as paid and shall post the appropriate amounts to the related entries. The final statement generally shall be available to the filer the day following the acceptance of the ACH payment; this final statement may be utilized as evidence that statement payment has occurred through an ACH transaction. In other instances, a cancelled check may serve as evidence of payment.

(d) *Choice of excluding certain entries from statement processing.* An ABI filer using statement processing, generally, has the right to inform Customs electronically whether he desires that a particular entry summary be paid by individual payment or through statement processing. If a filer opts to use statement processing for entry/entry summaries for quota-class and other special classes of merchandise defined in § 142.13(c) of this chapter, he shall use statement processing in the normal course of business for the largest possible portion of his eligible non-special class entries also; further, he shall pay for these entry/entry summaries through ACH. If a filer opts to use statement processing and, therefore, ACH for entry/entry summaries for special classes of merchandise defined in § 142.13(c) of this chapter, these entry/entry summaries cannot be deleted from a statement. A filer who excludes or deletes entries from the statement process and ACH should be prepared to articulate a sound business reason why these exclusions or deletions have occurred. If Customs believes that a broker is using ACH for his quota-class entries and not using statement processing and ACH for the largest possible portion of his eligible non-special class entries, the ABI participant may be consulted by Customs as to why he has not used statement processing and ACH for certain entries. If Customs is not satisfied, after such consultation, that there were sound articulable business reasons for the exclusion or deletion of non-special class entries, Customs may disqualify the participant from using statement processing/ACH for quota-class entries.

(e) *Scheduled statement date.* Entry/entry summaries and entry summaries must be designated for statement processing within 10 working days after the date of entry. It is the responsibility

of the ABI filer using statement processing to ensure that the elected scheduled statement date is within that 10-day timeframe. Customs will not warn the filer if the scheduled statement date given is late.

PART 132—QUOTAS

1. The authority citation of part 132, Customs Regulations (19 CFR part 132), continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624.

2. Section 132.1(d) is revised to read as follows:

§ 132.1 Definitions.

* * * * *

(d) *Presentation.* "Presentation" is the delivery in proper form to the appropriate Customs officer of:

(1) An entry summary for consumption, which shall serve as both the entry and the entry summary, with estimated duties attached (see § 141.0a(b)); or

(2) An entry summary for consumption, which shall serve as both the entry and the entry summary, without estimated duties attached, if the entry/entry summary information and a valid scheduled statement date (pursuant to § 24.25 of this chapter) have been successfully received by Customs via the Automated Broker Interface; or

(3) A withdrawal for consumption with estimated duties attached.

* * * * *

3. The text of § 132.11(b) is revised to read as follows:

§ 132.11 Quota priority and status.

* * * * *

(b) *Documentation and deposit of duties in proper form required.* Merchandise covered by an entry summary for consumption, which serves as both the entry and entry summary, or by a withdrawal for consumption, shall be regarded as entered for purposes of quota priority and shall acquire quota status if:

(1) The entry summary or withdrawal for consumption is in proper form, and duties have been attached to the entry summary or withdrawal for consumption in proper form; or

(2) The entry summary for consumption is in proper form, and the entry/entry summary information and a valid scheduled statement date (pursuant to § 24.25 of this chapter) have been successfully received by Customs via the Automated Broker Interface.

* * * * *

4. Section 132.11a is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 132.11a Time of presentation.

(a) *General rule.* Except as provided in paragraph (b) of this section, the time of presentation of an entry/entry summary for quota purposes shall be the time of delivery in proper form of:

(1) An entry summary for consumption, which serves as both the entry and the entry summary, with estimated duties attached; or

(2) An entry summary for consumption, which shall serve as both the entry and the entry summary without estimated duties attached, if the entry/entry summary information and a valid scheduled statement date have been successfully received by Customs via the Automated Broker Interface (see § 132.1(d)(2); payment must be subsequently made by the statement processing method as set forth in § 24.25 of this chapter); or

(3) A withdrawal for consumption with estimated duties attached.

* * * * *

(c) *Failure to use statement processing method.* If presentation is chosen to be made pursuant to § 132.11a(a)(2) and payment is not made as required through the statement processing method, the district director may require filing of an entry summary for consumption with estimated duties attached as described in § 132.11(a)(1) for future filings.

§ 132.14 [Amended]

5. The first sentences of paragraphs (a) (1), (2), (3), (4)(i) introductory text and (4)(ii) introductory text in § 132.14 are amended by inserting the word "proper" before the words "presentation of an entry summary for consumption, or withdrawal for consumption."

6. The first sentences of paragraphs (a) (1), (2), (3), (4)(i) introductory text and (4)(ii) introductory text in § 132.14 are amended by removing the words "with estimated duties attached" following the words "presentation of an entry summary for consumption, or a withdrawal for consumption" and replacing them with "pursuant to § 132.1 of this part."

PART 141—ENTRY OF MERCHANDISE

1. The general and relevant specific authority for part 141, Customs Regulations, continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624. Subpart G also issued under 19 U.S.C. 1505.

2. The introductory paragraph of § 141.101 is revised to read as follows:

§ 141.101 Time of deposit.

Estimated duties shall either be deposited with the Customs officer designated to receive the duties at the time of the filing of the entry documentation or the entry summary documentation when it serves as both the entry and entry summary, or be transmitted to Customs according to the statement processing method as described in § 24.25 of this chapter, except in the following cases:

* * * * *

2. The second sentence of § 141.62(b)(2)(ii) is amended by inserting the words "or without the estimated duties attached, if the entry/entry summary information and a scheduled statement date have been successfully received by Customs via the Automated Broker Interface," between the words "with the estimated duties attached," and "shall be the time of presentation for quota purposes."

§ 141.68 [Amended]

3. Section 141.68(b) is amended by deleting the period at the end of the paragraph and adding, "except as provided in § 142.13(c)."

4. Section 141.68(d) is amended by inserting between the words "with estimated duties attached," and "as provided in § 132.11a of this chapter," the words "or if the entry/entry summary information and a valid scheduled statement date (pursuant to § 24.25 of this chapter) have been successfully received by Customs via the Automated Broker Interface, without the estimated duties attached,".

PART 142—ENTRY PROCESS

1. The authority citation for part 142 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. Section 142.13 (c)(1) and (c)(2) are revised to read as follows:

§ 142.13 When entry summary must be filed at time of entry.

* * * * *

(c) *Special classes of merchandise—*(1) *Quota-class merchandise.* Quota-class merchandise shall not be released upon delivery of entry documentation before presentation of:

(i) An entry summary for consumption with estimated duties attached; or

(ii) A withdrawal for consumption with estimated duties attached; or

(iii) An entry summary for consumption, without the estimated duties attached, if the entry/entry summary information and a valid scheduled statement date have been successfully received by Customs via

the Automated Broker Interface. (See part 132 and § 24.25 of this chapter.)

(2) *Other classes of merchandise.* Entry summary documentation, with estimated duties attached, or a withdrawal for consumption with estimated duties attached, or an entry summary for consumption, without the estimated duties attached if the entry/entry summary information and a valid scheduled statement date have previously been transmitted to Customs via the Automated Broker Interface (see § 24.25 of this chapter) shall be filed at the time of entry before release of any other merchandise of a class designated by Customs Headquarters.

* * * * *

3. Section 142.21(e) is revised to read as follows:

§ 142.21 Merchandise eligible for special permit for immediate delivery.

* * * * *

(e) *Quota-class merchandise*—(1) *Tariff rate.* At the discretion of the district director, merchandise subject to a tariff-rate quota may be released under a special permit for immediate delivery provided the importer has on file a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. An entry summary shall be properly presented pursuant to § 132.1 of this chapter within the time specified in § 142.23, or within the quota period, whichever expires first. If proper presentation is not made until after the tariff-rate quota is filled, the merchandise shall not be entitled to the quota rate of duty, and the importer shall pay duties at the over-quota rate.

(2) *Absolute.* At the discretion of the district director, perishable merchandise of a class approved by Customs Headquarters which is subject to an absolute quota may be released under a special permit for immediate delivery for removal to the importer's premises, or to any other location approved by the district director, until an entry summary is properly presented pursuant to § 132.1 of this chapter. A proper entry summary must be presented for merchandise so released within the time specified in § 142.23, or within the quota period, whichever expires first. If the absolute quota is filled before the importer has properly presented an entry summary, he may either present an entry summary for warehouse or, under Customs supervision, export or destroy the merchandise.

* * * * *

4. Section 142.22(b)(1) is revised to read as follows:

§ 142.22 Application for special permit for immediate delivery.

* * * * *

(b) *Customs custody.* * * *

(1) An entry summary for consumption, with estimated duties attached; an entry summary for consumption without estimated duties attached, if entry/entry summary information and a valid scheduled statement date (pursuant to § 24.25 of this chapter) have successfully been received by Customs via the Automated Broker Interface; an entry summary for warehouse; or an entry summary for entry temporarily under bond, which may be filed in any of the circumstances under § 142.21 of this part except for merchandise released from warehouse under § 142.21(f) of this part;

* * * * *

PART 143—CONSUMPTION, APPRAISEMENT, AND INFORMAL ENTRIES

1. The authority citation of part 143 continues to read as follows:

Authority: 19 U.S.C. 66, 1481, 1484, 1498, 1624.

2. The first sentence of § 143.28 is revised to read as follows:

§ 143.28 Deposit of duties and release of merchandise.

Unless statement processing and ACH are used pursuant to § 24.25 of this chapter, the estimated duties and taxes, if any, shall be deposited at the time the entry is presented and accepted by a Customs Officer, whether at the customhouse or elsewhere. * * *

Approved: November 30, 1989.

Michael H. Lane,

Acting Commissioner of Customs.

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 89-28513 Filed 12-6-89; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

[Docket No. 89F-0078]

Indirect Food Additives: Adhesives and Components of Coatings

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of a mixture of *cis* and *trans*-1,4-cyclohexanedimethanoldibenzoate as a component of adhesives used in the manufacture of packaging intended to contact food. This action responds to a petititon filed by Velsicol Chemical Corp.

DATES: Effective December 7, 1989. Written objections and requests for a hearing by January 8, 1990.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of April 6, 1989 (54 FR 13951), FDA announced that a food additive petition (FAP 9B4139) had been filed by Velsicol Chemical Corp., 5600 North River Rd., Rosemont, IL 60018-5119, proposing that § 175.105 Adhesives (21 CFR 175.105) be amended to provide for the safe use of a mixture of *cis* and *trans*-1,4-cyclohexanedimethanoldibenzoate as a component of adhesives used in the manufacture of packaging intended to contact food.

FDA has evaluated in the petition and other relevant material. The agency concludes that the proposed food additive use is safe. Therefore, the agency is amending § 175.105(c)(5) by adding a new entry to the table. The agency also concludes that use of the CAS Registry Number for this additive specifies the additive as a mixture, precluding the necessity to list the terms *cis* and *trans*.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no

significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before January 8, 1990 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR part 175 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. Section 175.105 is amended in paragraph (c)(5) by alphabetically adding a new entry in the table to read as follows:

§ 175.105. Adhesives

* * * * *

(c) * * *

(5) * * *

Substances	Limitations
* * * * *	
1,4-Cyclohexanedimethanoldibenzoate (CAS Reg. No. 35541-81-2).	
* * * * *	

Dated: November 29, 1989.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-28571 Filed 12-6-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD7 89-56]

Special Local Regulations: City of Pompano Beach, FL, Christmas Boat Parade

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the City of Pompano Beach Christmas Boat Parade. The event will be held on December 10, 1989, from 6:30 p.m. to 9:00 p.m. The regulations are needed to promote the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations will become effective on December 10, 1989, at 5:30 p.m. e.s.t. and will terminate on December 10, 1989, at approximately 10:00 p.m. e.s.t.

FOR FURTHER INFORMATION CONTACT: Contact LTJG R. Malcolm, Jr., (305) 535-4304.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impractical as there was insufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information: The drafters of this regulation are LCDR David G. Dickman, Project Attorney, Seventh Coast Guard District Legal Office, and LTJG Ralph Malcolm, Jr., Project Officer, USCG Group Miami Beach, FL.

Discussion of Regulations: The Pompano Beach Christmas Boat Parade is a night time parade of vessels ranging in length from 23 feet to 125 feet, decorated with holiday lights and ornaments. The parade will form in the staging area at Lake Santa Barbara then proceed north up the Intracoastal Waterway (ICW) to Hillsboro Boulevard Bridge where it will disband. 150 vessels are expected to participate in the parade and over 100 spectator vessels are expected along the parade route. The regulations establish a moving regulated area of 1000 feet ahead and 1000 feet astern of the string of parade vessels. The regulated area also includes an area 50 feet east and west along the north-south axis of the regulated area as the participating vessels navigate north in the ICW.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-0756 is added as follows:

§ 100.35-0756 Pompano Beach Christmas Parade, FL.

(a) *Regulated Area:* A regulated area is established surrounding the parade participants as they transit the parade route. Nonparticipating vessels will be prohibited from entering an area encompassing 50 feet on either side of the north-south axis of the parade. The axis extends from 1000 feet ahead of the lead vessel in the parade to 1000 feet astern of the last participating vessel in the parade as the parade transits north in the Intracoastal Waterway (ICW) in the vicinity of Pompano Beach, Florida. The parade starts at Lake Santa Barbara, then proceeds north to Hillsboro Boulevard Bridge, where the parade will disband.

(b) *Special Local Regulations:* (1) Entry into the regulated area is prohibited unless authorized by the Patrol Commander. After the passage of the parade participants and the regulated area, all vessels may resume normal operations.

(2) A succession of not fewer than 5 short whistle or horn blasts from a patrol vessel will be the signal for any

nonpartcipating vessel to stop immediately. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

(c) *Effective Date:* These regulations are effective on December 10, 1989, at 5:30 p.m. e.s.t. and terminate on December 10, 1989, at approximately 10:00 p.m. e.s.t.

Dated: November 27, 1989.

Martin H. Daniell,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 89-28541 Filed 12-6-89; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD1-89-140]

Drawbridge Operation Regulations; Manasquan River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final temporary rule.

SUMMARY: At the request of the New Jersey Department of Transportation (NJDOT), the Coast Guard is issuing temporary regulations governing the Route 70 drawbridge over Manasquan River, mile 3.4 at Riviera Beach, between Point Pleasant and Manasquan, New Jersey, to provide that the draw need not be opened for the passage of vessels for three months from 1 December 1989 through 1 March 1990. This temporary regulation is being made to facilitate structural and machinery repairs to the bascule span. This action will relieve the bridge owner of the burden of having to open the draw during the reconstruction of the bridge and will only permit marine traffic which can pass under the closed span to transit the waterway above the bridge. After three months, the proposed regulation will terminate, and the bridge will return to the prior mode of operation.

EFFECTIVE DATE: These regulations are effective 9 a.m. 1 December 1989 through 5 p.m. 1 March 1990.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668-7170.

SUPPLEMENTARY INFORMATION: This temporary deviation from the regulation is issued under 33 CFR 117.35(d).

Drafting Information: The drafters of these regulations are Waverly W. Gregory, Jr., project officer, and Lieutenant John B. Gately, project attorney.

Discussion of Final Temporary Regulations: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for these regulations and good cause exists for making it effective in less than 30 days after of **Federal Register** publication. Publishing a Notice of Proposed Rulemaking and delaying its effective day would be contrary to the public interest since implementation of these temporary regulations is necessary to facilitate the bridge repairs prior to the start of the next recreational boating season. The bridge machinery and structure are in a deteriorated condition and NJDOT has multiple bridge contracts in place to effect the repairs to this structure during this winter. The primary users of the bridge are taller vessels that utilize the marine facilities upstream of the bridge. These facilities expressed minimal concern providing repairs completed by 1 March 1990. The 1986, 1987 and 1988 bridge opening logs, for the same three months, indicate 12, 22 and 17 total vessel openings, respectively; and 26, 13 and 0 openings for test or repairs. Current regulations provide that the draw of the Route 70 bridge shall open on signal from 7 a.m. to 11 p.m. The draw need not be opened from 11 p.m. to 7 a.m. The temporary regulation would suspend a portion of the existing regulation and allow the bridge to remain in the closed position at all times from 9 a.m. on 1 December 1989 through 1 March 1990. The existing bridge (built in 1937) is a single leaf bascule bridge. The vertical clearance above mean low and mean high water is 18 and 15 feet, respectively.

Economic Assessment and Certification: These temporary regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This is based upon the fact that the closure will be accomplished during the winter months when these facilities are closed or have minimal activity and recreational boats are out of the water. The regulation also will not prevent the passage of vessels who are able to pass under the closed span. Since the economic impact of this proposal is expected to be minimal the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism Implication Assessment: This action has been analyzed under the principles and criteria in Executive Order 12612, and it has been determined that this proposed rule does not have sufficient federalism implications to warrant preparation of a federal assessment.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Regulations

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.727 is amended by designating the existing test as paragraph (a) and suspending it for the period 9 a.m., December 1, 1989, through 5 p.m., March 1, 1990, and paragraph (b) is added to read as follows for the period 9 a.m., December 1, 1989, through 5 p.m., March 1, 1990.

Note: Because this is a temporary rule, this paragraph will not be codified in the CFR.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.727 Manasquan River.

* * * * *

(b) Repair of the S70 bridge. The draw of the S70 bridge, mile 3.4, at Riviera Beach, need not be opened for the passage of any vessel and paragraph (a) of this section is suspended from 9 a.m., December 1, 1989, through 5 p.m., March 1, 1990, inclusive, to effect major repairs to the bridge.

Dated: December 1, 1989.

R.O. Buttrick,

Captain, U. S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 89-28542 Filed 12-6-89; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3692-8]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of final rulemaking.

SUMMARY: This notice approves Ohio Administrative Code (OAC) Rules 3745-17-01, 03, and 10 as they apply to four boilers: (1) The one gas and No. 2 oil-fired boiler and (2) the three coal-fired boilers at Youngstown Thermal Corporation in Youngstown (Mahoning County), Ohio. Youngstown Thermal is

located in the portion of Mahoning County that is designated a nonattainment area for total suspended particulates (TSP). The revision establishes particulate matter limits of 0.02 pound of particulate emissions per million BTU for the one gas and No. 2 oil-fired boiler and 0.14 pound of particulate emissions per million BTU for the three coal-fired boilers. This action is based on February 17, 1988, and January 4, 1989, revision requests that were submitted to USEPA by the State of Ohio.

DATES: This action will be effective February 5, 1990, unless notice is received by January 8, 1990 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the State submittal and other materials related to this rulemaking are available for inspection during normal business hours at the following addresses: (It is recommended that you telephone Maggie Greene, at (312) 886-6088, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604

Ohio Environmental Protection Agency, Office of Air Pollution Control, 1800 WaterMark Drive, P.O. Box 1049, Columbus, Ohio 43266-0149

FOR FURTHER INFORMATION CONTACT: Maggie Greene, (312) 886-6088.

SUPPLEMENTARY INFORMATION: On February 17, 1988, the State of Ohio submitted to USEPA a revision to the TSP portion of its State Implementation Plan (SIP). The revision was in the form of a Findings and Orders for the one gas and No. 2 oil-fired boiler (B001) and the three coal-fired boilers (B002, B003 and B004) located at the Youngstown Thermal Corporation in Youngstown, Mahoning County, Ohio. On January 4, 1989, it submitted its underlying State TSP rules and requested that we rulemake on these rules as they apply to Youngstown Thermal, but not to all other sources in Ohio. These rules are OAC Rule 3745-17-01, Definitions; Rule 3745-17-03, Measurement Methods and Procedures; and Rule 3745-17-10, Restrictions on Particulate Emissions from Fuel Burning Equipment. (Ohio has requested that we withhold further rulemaking on these rules as they apply to other sources in the State, while it evaluates and develops its PM_{10} plans.)[1]

Youngstown Thermal is located in that portion of Mahoning County that is designated nonattainment for TSP (40 CFR 81.336).[2] There is no approved Part D TSP SIP for Mahoning County.

The State is requesting that the particulate emission limitation applicable to the one gas and No. 2 oil-fired boiler and the three coal-fired boilers be established pursuant to Ohio Administrative Code (OAC) Rule 3745-17-10, Restrictions on Particulate Emissions from Fuel Burning Equipment. These boilers are currently governed by the emission limitations in Federal SIP Regulation AP-3-11, Restriction on Emission of Particulate Matter from Fuel Burning Equipment. (AP-3-11 was approved on April 15, 1974 (39 FR 41691)).

After today's action, the particulate emission limitations in the federally approved SIP for this source will be consistent with those in the current State rule. USEPA's specific discussion of the emission limitations is found under the "Discussion of Revision Request" section, which follows.

Discussion of Revision Request

Emission Limitations

The following emission limitations are derived from Rule 10 and contained in the Findings and Orders:

- For B001 the maximum allowable particulate emission rate shall not exceed 0.02 pound of particulate emissions per million BTU actual heat input.
- For B002, B003, and B004 the maximum allowable particulate emission rate for each boiler shall not exceed 0.14 pound of particulate emissions per million BTU actual heat input. (This limit is enforceable for each unit individually.)

The following emission limitation is derived from AP-3-11 and is the emission limitation for these boilers under the federally approved SIP.

- For each of the four boilers, the allowable particulate emission limitation is 0.126 pound per million BTU actual heat input.

Under USEPA's July 1, 1987, PM_{10} criteria, which must be satisfied in evaluating TSP emission rate changes in the interim, the total allowable emission rates must provide progress towards ensuring attainment and maintenance of the PM_{10} NAAQS. To meet this criteria, USEPA compares the overall control level obtained under AP-3-11 with that obtained under Rule 10. The major difference between the two regulations is that AP-3-11 does not recognize the derating of boilers, and it requires the aggregation of all boilers at a facility (regardless of the type of fuel used) for purposes of determining the allowable mass emission rate. The comparison showed that the total allowable emission of TSP (from all boilers) is 49.5 lb/hr under Rule 10 and 58.0 lb/hr under AP-3-11. Thus, the emission limitations under Rule 10 are most stringent and result in a 15 percent decrease in allowable emissions. USEPA concludes that the emission limitations found in the Findings and Orders will ensure progress towards attainment and maintenance of the PM_{10} NAAQS and are approvable.

Compliance Testing

As a method of determining compliance with the emission limitations, stack testing shall be performed in accordance with USEPA Methods 1-5, 40 CFR part 60, appendix A.[3]

Final Action on Findings and Orders

USEPA is approving the following emission limitations for the boilers at Youngstown Thermal:

B001: 0.02 pound of particulate emissions per million BTU

B002, B003, and B004: 0.14 pound of particulate emissions per million BTU

Because USEPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on February 5, 1990. However, if we receive notice by January 8, 1990 that someone wishes to submit critical comments, then USEPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

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[1] On July 1, 1987 (52 FR 24634), USEPA promulgated its new 10 micrometer based particulate matter (PM_{10}) National Ambient Air Quality Standard (NAAQS). States are required to submit plans which assure attainment and maintenance of the PM_{10} NAAQS.

[2] The PM_{10} standards eliminated the previous TSP NAAQS, although States must enforce TSP NAAQS until new PM_{10} SIPs are promulgated and the TSP SIPs replaced. It is now within the discretion of the State to determine whether revisions to the TSP SIP, based upon a TSP standard which has been removed, should be processed. The State, in the February 17, 1988, SIP revision submittal, has requested that USEPA process the Youngstown Thermal TSP SIP revision.

[3] Youngstown Thermal has installed additional particulate controls for its coalfired boilers which include new (or upgraded) multi-clone mechanical collectors and side-stream baghouses, along with associated fans, ductwork, and instrumentation.

This action has been classified as a Table 3 action by the Regional Administrator, under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of 2 years.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 5, 1990. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Incorporation by reference, Intergovernmental relations, Total suspended particulates.

Note—Incorporation by reference of the State Implementation Plan for the State of Ohio was approved by the Director of the **Federal Register** on July 1, 1981.

Dated: September 27, 1989.

Valdas V. Adamkus,

Regional Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart KK—Ohio

Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1870 is amended by adding paragraph (c)(85) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(85) On February 17, 1988, and January 4, 1989, the Ohio Environmental Protection Agency Submitted a revision to the total suspended particulate SIP for Youngstown Thermal Corporation located in Youngstown, Ohio. This revision establishes a 0.02 lb/MMBTU emission limit for the one gas and Number 2 oil-fired boiler (B001) and a 0.14 lb/MMBTU limit for the three coal-fired boilers (B002, B003, and B004).

(i) *Incorporation by reference.* (A) Ohio Administrative Code (OAC) Rule 3745–17–01, effective in Ohio on October 1, 1983; Rule 3745–17–03, effective in Ohio on October 15, 1983; and Rule 3745–17–10, effective in Ohio on October 1, 1983, as they apply to Youngstown Thermal Energy Corporation in Youngstown, Ohio only.

[FR Doc. 89–28308 Filed 12–6–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–34; RM–5603, RM–6235]

Radio Broadcasting Services; Drakesboro and Madisonville, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 295A to Madisonville, Kentucky, at the request of Madisonville Media, and Channel 280A to Drakesboro, Kentucky, in response to a counterproposal filed by Janice L. O'Brien. Channel 295A can be allotted to Madisonville in compliance with the Commission's minimum distance separation requirements. The coordinates are North Latitude 37–19–41 and West Longitude 87–29–56. Channel 280A can be allotted to Drakesboro in compliance with the minimum distance separation requirements with a site restriction of 6.6 milometers (4.1 miles) southeast in order to avoid a short spacing to Station WIKY(FM), Channel 281B, Evansville, Indiana. The coordinates are North Latitude 37–09–57 and West Longitude 87–00–41. With this action, this proceeding is terminated.

DATES: Effective January 18, 1990; The window period for filing applications will open on January 19, 1990; and close on February 20, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 87–34, adopted November 13, 1989, and released December 4, 1989.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. § 73.202(b), the Table of FM Allotments is amended by adding Drakesboro, Kentucky, Channel 280A, and Madisonville, Kentucky, Channel 295A.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–28616 Filed 12–6–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–587, RM–6471; RM–6689]

Radio Broadcasting Services; Comanche, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule; technical amendment.

SUMMARY: This technical amendment is being made to correct an error that has been identified by the Agency in the Code of Federal Regulations.

EFFECTIVE DATE: December 7, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments, for Comanche, Oklahoma, is amended by removing Channel 244A and adding in its place Channel 245C2.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–28617 Filed 12–6–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 86-237; RM-5191, RM-5546]

Radio Broadcasting Services; Greeneville and Colonial Heights, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 290A to Colonial Heights, Tennessee, as that community's first FM service, at the request of Murray Communications. We have also dismissed the proposal to allot Channel 290A to Greeneville, Tennessee, filed by Burley Broadcasters, Inc., for its failure to continue to express an interest in the proposal. *See* 51 FR 23087, June 25, 1986. With this action, this proceeding is terminated.

DATES: Effective January 18, 1990; The window period for filing applications will open on January 19, 1990, and close on February 20, 1990.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 86-237, adopted November 15, and released December 4, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy cntractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. § 73.202(b), the Table of FM Allotments, is amended under Tennessee, by adding Colonial Heights, Channel 290A.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-28618 Filed 12-6-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Parts 270, 280, 281, 282, 285, 290, 296, and 299

[Docket No. 80860-9229]

RIN 0648-AC47

Fish and Seafood Promotion

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this rule to implement the Fish and Seafood Promotion Act of 1986 (Act), as it pertains to seafood marketing councils for one or more species of fish or fish products. This rule governs the establishment and operations of such councils. Additional requirements applicable to the operations of the councils appear in the Act and continue to be applicable. This rule is intended to implement the Act and to provide a vehicle to strengthen the competitiveness of the United States fishing industry in the domestic and international marketplace; encourage development and utilization of all species of fish available for harvest by the United States fishing industry; encourage the utilization of domestically-produced fish through enhancement of markets, promotion and public relations; help the United States fishing industry develop methods to improve product quality and efficiency in the marketplace; develop better coordination of fisheries marketing and promotion activities with commercial fisheries research and development programs; and inform and educate the public about the nutritional value of fish in the diet.

EFFECTIVE DATE: December 7, 1989.

FOR FURTHER INFORMATION CONTACT: Shirley V. Smith, Office of Trade and Industry Services, (301) 427-2358.

SUPPLEMENTARY INFORMATION: The Fish and Seafood Promotion Act of 1986, enacted November 14, 1986, authorizes a National Fish and Seafood Promotional Council and seafood marketing councils for one or more species of fish or fish products. The National Council has been established. It is authorized by the Act to enter into agreements with applicants to fund referenda to establish and terminate species-specific seafood marketing councils, coordinate their activities, and fund referenda to establish quality standards.

The Secretary will establish a council upon (1) application of particular sectors of industry to the Secretary of Commerce (Secretary) for establishment of a council; (2) favorable review of the application by the Secretary, and (3) passage of a referendum conducted by the Secretary among sector participants on the proposed charter. The Secretary will appoint members to a seafood marketing council from lists of nominees supplied by the industry. Councils are required to submit annual plans and budgets for species-specific marketing and promotion, including consumer education, research, and other activities of the councils. Councils are funded through self-assessment by certain segments of the industry represented on the councils. They are authorized to develop quality standards for the fish or fish products being promoted. Once quality standards are developed, the Secretary shall issue regulations in § 270.14 of this part governing the use of official identifiers associated with those standards.

The rule governs the establishment and operations of councils. Additional requirements applicable to the operations of councils appear in the Act and continue in effect.

Comments and Responses

On December 21, 1988, a proposed rule governing the establishment and operations of species-specific seafood marketing councils under the Act was published in the Federal Register (53 FR 51284). A copy of the proposed rule was also mailed to NMFS regional offices, regional fisheries development foundations, industry associations, individual companies, and other interested parties. Notice of availability of the proposed rule was also published in a number of fishing industry publications. Five responses were received (one from a fisheries development foundation, three from industry trade associations, and one from a county government) in response to the invitation to submit comments.

Comments and recommendations from the public covered several provisions of the proposed rule, e.g., application, petition, list of sector participants, referendum, nomination of council members, council boundary, assessments, quality standards, books, records and reports, and clarification of terms and definitions. All comments were considered. Some changes were made in the final rule as a result of the recommendations. Where recommendations were inconsistent with Administration policy or the intent of the Act, they were not accepted. The comments are summarized below with NMFS's response.

1. Definitions

Comment: One commenter recommended that a definition of "value" be added.

Response: The agency agrees and, for clarification purposes, has also included definitions of "consumer education," "fish," and "research" from the Act. The definition of "receiver" has been modified to indicate that acquiring fish means taking title to the fish and the definition of "sector participant" has been modified to include the fact that sector participants must meet eligibility requirements as defined by petitioners to vote in a referendum.

2. Application

a. *Comment:* One commenter suggested that the agency prepare a step-by-step guide that could be used in preparing an application to establish a council. This guide should include examples of those documents, such as council charters, required by the rule.

Response: The final rule contains a step-by-step guide regarding submission of an application that lists all of the requirements for the petition, charter, and list of sector participants. If additional information is needed by applicants, it may be requested.

b. *Comment:* A commenter suggested that in the section regarding review of application, the turn-around time for the Secretary to act on an application (approve/disapprove) be reduced to 90 days (from 180 days as stated in the proposed rule).

Response: The 180 day review period described in the proposed rule (§ 270.4) is the maximum allowed by the Act for the Secretary to render a final determination on the acceptability of the application. This amount of time is not unreasonable if the proposed council has a substantial number of participants whose eligibility would have to be verified by the Secretary, and/or if the application is deficient, thus requiring considerable revisions by the petitioners and further review and verification by the Secretary. In the case of a proposed council with a small number of participants and a complete application, the turn-around time could be less than 180 days. Clarifying language has been added to the final rule to indicate that if a negative final determination has been made by the Secretary and provided in writing to the petitioners who submitted the application, a corrected application may be submitted to the Secretary for approval. The Secretary then has 180 days from receipt of the corrected application to render a final determination on its acceptability.

3. Petition

a. *Comment:* A commenter requested a defintion of the term "sufficient resources" as it is used in the proposed rule, which requires that the petition contain a statement that, if a council is established, sufficient resources will be available to the council for initial administrative expenditures pending collection of assessments.

Response: NMFS agrees and has modified the final rule to provide examples of "sufficient resources," such as cash, donated office space, services, supplies, etc.

b. *Comment:* A commenter suggested that the requirement of 10 percent for the minimum value of fish handled by the applicants in a particular sector wishing to initiate a council is too high. The commenter suggested a 5 percent threshold.

Response: The 10 percent threshold is specified in § 210(d)(1)(B) of the Act (16 U.S.C. 4009) and is not discretionary.

4. List of Sector Participants

a. *Comment:* One commenter suggested that a provision be incorporated within the final rule allowing NMFS to assist with the development of the list of sector participants.

Response: It is recognized that development of the list of sector participants meeting the minimum requirements stated in the proposed charter may be difficult. The Act requires the petitioners, to the extent practicable, to develop such a list. The Secretary will, to the extent practicable, verify the validity of the petitioners' list, which may require adding names or deleting names provided by the petitioners. In addition, the agency will provide appropriate information in its possession of a non-proprietary nature to assist the petitioners in developing this list.

b. *Comment:* One commenter recommended a triennial rather than an annual update of sector participant data to reduce administrative costs.

Response: The requirement for an annual update of sector participant data is seen as beneficial to both the council and the Secretary. For example, the council will need a current list of sector participants in each sector represented on the council, particularly for the purpose of collecting assessments. The Secretary will need a current list for enforcement purposes and should the need arise for conducting a referendum to terminate a council.

5. Referenda

a. *Comment:* A commenter inquired whether the agency will provide a preliminary estimate of the cost of a referendum and thereby the size of the requisite bond in order for applicants to estimate the amount of bond that would be necessary.

Response: Once an application has been approved, the agency will be able to provide the applicants with an estimate of the total cost for conduct of the referendum. After the referendum has been conducted, the Secretary will notify the applicants of the exact cost. Although the cost of each referendum will vary according to the size of the council, there are some cost categories that will be common to the conduct of all referenda, e.g., verification of the list of sector participants, publication of the application in the **Federal Register**, printing and postage costs for the ballots, etc. In the event a public hearing is requested, this would also add to the cost.

b. *Comment:* One commenter suggested that the final rule should reflect the opportunity for the National Fish and Seafood Promotional Council to enter into agreements with applicants to fund a referendum to establish a species-specific seafood marketing council.

Reponse: The preamble to the rule contains the statement that the National Council may enter into agreements with one or more species-specific councils and is authorized by the Act to fund referenda to establish and terminate such councils and fund referenda to establish quality standards. (See Supplementary Information section of the preamble of this rule.)

c. *Comment:* A commenter suggested that an agreement between the applicant and the National Council to fund a referendum should be acceptable to the Secretary as suitable security to cover the cost of a referendum.

Response: The agency agrees and the final rule has been revised to reflect this.

d. *Comment:* A commenter requested that the sections of the rule regarding voting results be clarified to make clear that the 66 percent value criterion is based on the total value of fish and fish products handled in the sector by those eligible to vote, and not the value of the products handled by both eligible and ineligible sector participants.

Response: It is the agency's opinion that this 66 percent value criterion refers to the total value of fish and fish products handled in each sector by those who meet the eligibility requirements, as defined by the

petitioners, to vote in the referendum. The final rule has been modified to clarify this point.

e. *Comment:* A commenter asked in which sector or sectors a seafood company should vote if it is vertically integrated.

Response: A vertically integrated seafood company may qualify to vote in more than one sector, depending on the requirements established for each sector by the council. The final rule has been modified to request that the petitioners specify in the List of Sector Participants all sectors for which a sector participant meets the eligibility requirements to vote in a referendum. However, only one vote per company per referendum will be accepted, regardless of the number of sectors for which the participant may qualify. The ballot for each referendum will request that each person voting certify in which sector he/she is voting in that particular referendum. This certification by sector participants voting in a referendum will be important to the Secretary and the council in order to determine the success or failure of a referendum, since the percentage of sector participants voting favorably and the value of fish products they handled in a sector will determine the outcome of a referendum. (See § 270.7 Results of referendum of the final rule.)

f. *Comment:* One commenter inquired as to whether a referendum would pass if most of the sectors of a proposed council voted for the charter and one sector voted against it.

Response: The referendum to establish a council would pass if the votes cast in favor of the proposed charter constitute a majority of the sector participants voting in *each* and *every* sector. Further, the majority must collectively account for, in the 12-month period immediately preceding the month in which the proposed charter was filed, at least 66 percent of the value of the fish and fish products described in the proposed charter that were handled during such period, in that sector, by those who meet the eligibility requirements to vote in the referendum as defined by the petitioners.

6. Nomination of Council Members

Comment: One commenter suggested that the final rule include language specifically to include nominations for membership on a council from associations representing those sectors.

Response: Since an association is included in the definition of "person" (also referred to as sector participant in the Act), an association could nominate members for the council and be a sector participant on the council if it met the minimum requirements for participation on the council.

7. Geographic Area of a Council

Comment: A commenter asked if it is possible to define a geographic boundary for a council specific to imports.

Response: The geographic area may be drawn in any manner the council desires. However, there is only one geographic area per council, which covers all sector participants. There cannot be an area for importers and a different area for receiver/processors within the same council.

8. Assessments

a. *Comment:* One commenter asked if a council would have the authority to assess products from Total Allowable Levels of Foreign Fishing (TALFF) or joint-venture harvests.

Response: The agency believes that assessing joint-venture operations or TALFF harvests would not be within the scope of the Act. The Act states that any person meeting the minimum requirements specified in each charter as measured by income, volume, or other relevant factors, may participate in a council. The Act goes further to define persons as any individual, group of individuals, partnership, corporation, association, cooperative, or any private entity organized or existing under the laws of the United States or any State, commonwealth, territory or possession of the United States. Based on these definitions, owners of foreign vessels harvesting under a TALFF allocation and receiving fish from U.S. harvesting vessels under joint-venture permits cannot be council participants, and therefore, cannot be assessed.

Further, the Act provides that only receivers or importers, or both, may be assessed. Foreign fishing vessels operating under a TALFF allocation involve a foreign flag fishing vessel and a foreign receiver, who may not be assessed. Joint-venture operations involve an American flag fishing vessel selling to a foreign receiver, who may not be assessed. If an American partner in a joint-venture operation acts as a receiver on behalf of the foreign partner, in order for the American partner to be assessed for joint-venture products it would have to be shown that the American partner actually took possession (title) of the product. The definition of "receiver" in the final rule has been modified to indicate that "acquiring" fish or fish products means taking possession of or title to same.

b. *Comment:* Another commenter asked if products of importers who are members of a council, conducting business outside the boundary of a council, are assessed.

Response: No. Only those products of importer participants that are entered or withdrawn from a warehouse for commercial purpose within the geographic area of a council may be assessed. If council participants conduct business over a large area, this might argue for a larger geographic area for a council or even a national council.

c. *Comment:* One commenter asked if products from outside the geographic boundary of a council are then brought into this area, how and at what point, if any, are they assessed? Do these products, in essence, become imports?

Response: Domestic products harvested within the geographic area of a council are assessed at the point receivers receive them. Products are classified as imports only if they are brought into the geographic area covered by the council from outside of the United States in accordance with the customs laws of the United States. Imported products are assessed at the time they are entered or withdrawn from a warehouse for commercial purposes. If the product is harvested by a domestic vessel, processed aboard a foreign vessel, then transshipped back to a domestic vessel for landing in the United States, that product *may* be considered an import by the U.S. Customs Service, depending upon the degree of processing aboard the foreign vessel.

d. *Comment:* A commenter asked how importers would be treated who are members of a council, maintaining offices within its boundary, but bring no products within the boundary.

Response: Imported products will be assessed only if they are brought into the geographic area of a council for commercial purposes. If only administrative offices of the importer are located within the geographic area of a council, and no product is moved within that area, no assessment would be collected and there would be no need for that importer to be involved in the council.

e. *Comment:* Another commenter asked if product taken on consignment could be assessed.

Response: No. Product taken on consignment would be assessed when it leaves a warehouse for commercial purposes as a result of a financial transaction between a buyer and seller.

f. *Comment:* One commenter asked if a procedure could be established to ensure that receivers of product, subject to assessment, report accurate information to a council for assessment

purposes, and if the council has authority to establish such a procedure.

Response: Each council has the authority to establish procedures to update its records regarding value of product handled by its sector participants and other appropriate information. In addition, the Act states that sector participants shall make available to the Secretary such information and data as are necessary for the effectuation, administration, or enforcement of this Act or any order or regulation issued pursuant to this Act. Although proprietary information must be maintained on a confidential basis by the Secretary or other officers and employees of the Department of Commerce, the Act states that if a council has reason to believe that a person subject to an assessment, order or regulation made or issued under this Act is violating such assessment, order or regulation, the council may refer the matter to the Secretary. Whenever a matter has been referred to the Secretary by a council and the Secretary or the Attorney General fails to take appropriate action within 60 days of such referral, the council may, upon filing notice with the Secretary or Attorney General and other interested parties, bring an action in its own name.

g. *Comment:* With respect to the requirement that the notice of assessment contain "the amount of the assessment," a commenter inquired if this is to be in the form of a rate, which will be applied to the appropriate volume of product handled. Or, the commentor asked, will the person subject to assessment have declared a volume to the council and the council in effect is sending him a invoice?

Response: This cannot be answered at this time. The method of collecting assessments is required to be developed by the applicants and specified in the proposed charter for each council. The Secretary reviews and approves each charter or charter amendment. The amount of the assessment may be a rate based on a percentage of cost or on a fixed amount per unit of volume or weight (pounds, metric tons, gallons, etc.) of product handled. A new section, Method of imposing assessments (Section 270.16), has been added to the final rule to clarify this issue.

h. *Comment:* A commenter requested that the agency define the term "value." Does it means purchase value, i.e., the amount paid for the product at purchase by the sector participant, or sales value?

Response: The value of fish and fish products is determined at the point a receiver obtains product from a harvester or an importer obtains product from a foreign supplier. Value may be expressed in monetary units as the price a receiver pays to a harvester or an importer pays to a foreign supplier. Value may also be expressed in units of weight or volume, e.g., pounds, metric tons, gallons, etc.

i. *Comment:* A commenter asked if it would be possible to base assessments on weight or volume rather than value.

Response: It is the agency's opinion that petitioners may establish an assessment rate based on value, which may be expressed in monetary units or units of volume or weight. For example, an assessment could be based on a percentage of cost such as 2 percent per $1000 of the initial purchase price of the product. It could also be based on a fixed amount per unit of weight or volume, e.g., $.01 per pound or $.02 per gallon.

9. Books, Records, and Reports

Comment: One commenter recommended that books and records should be maintained for 3 years, except where a council is dissolved in less than 3 years.

Response: The agency has determined that books and records of a council must be maintained for a minimum of 3 years even if a council is terminated in less than 3 years. The purpose of this requirement is to enable the Secretary to ensure that all remaining business of the terminated council is concluded in an orderly manner. The 3-year time limit is in accordance with OMB guidelines for implementing the Paperwork Reduction Act.

10. Quality Standards

a. *Comment:* Section 270.13(g) of the proposed rule stated that "[n]o quality standard adopted by a council may be used in the advertising or promotion of fish and fish products as being inspected by the United States Government unless the standard requires sector participants to be in the National Seafood Inspection Program (NSIP) and the product has been inspected or is under an NSIP-approved inspection program." A commenter recommended that because of the development of a seafood surveillance program for all seafood products, it would be appropriate to insert the phrase "or equivalent Federally-approved inspection program" after NSIP.

Response: It is not the agency's intent to include references to programs that are not currently in place. Designation of NSIP refers to the current U.S. Department of Commerce voluntary seafood inspection program only. The final rule has been changed to indicate this.

b. *Comment:* One commenter requested clarification as to what is meant by the provision in the proposed rule that the intent of quality standards may not be to "discriminate" against importers who are not members of the council, and that quality standards may not be developed for the purpose of creating non-tariff barriers. It was also unclear to this commenter why a quality standard must be compatible with the General Agreement on Tariffs and Trade (GATT) since these quality standards are not mandatory and no one will be prevented from selling product due to quality standards adopted by a council.

Response: "Discriminatory" quality standards are those standards that might directly or indirectly prevent foreign products from competing with U.S.-produced products. It is recognized that the "intent" of a quality standard may be difficult to establish. Although quality standards are not mandatory, the use of the identifier associated with quality standards adopted by a council will be Federally regulated. This identifier certifies that the product met certain quality standards when the identifier was affixed to it. Since the Secretary is authorized to approve/disapprove the quality standards and promulgate regulations governing the use of the identifier should the referendum to adopt the standard pass, it is important that these standards be consistent with U.S. obligations under the GATT.

11. Other

a. *Extension of Comment Period.*

Comment: One commenter requested an extension of the 60-day time period for public comment on the proposed rule to address pertinent issues which may arise at the completion of the Seafood Marketing Council feasibility studies. The commenter suggested that the language of the proposed rule may not cover some aspects critical to the running of a successful referendum and the formation of a council.

Response: An extension of the comment period is not warranted. Issues related to unique aspects associated with particular councils will be dealt with on a case-by-case basis in accordance with the Act. If circumstances dictate, the final rule can be amended in the future.

b. *Positive Support for Councils.* One commenter wrote in support of seafood marketing councils in the New England area.

c. *Time Period Covered by Assessment.* Paragraph 270.15(a) of the proposed rule contained several items

that must be included in the "Notice of assessment." One item, the period of time covered by the assessment, was inadvertently omitted. The final rule has been modified to include this requirement.

Changes from the Proposed Rule

This final rule contains only minor changes from the proposed rule. Most changes have been discussed in the Comment and Discussion section of this notice. In some instances, the final rule has been recognized and certain of the Act's requirements have been added to the regulatory text. This was done to make the regulations more readable.

Classification

The Under Secretary for Oceans and Atmosphere, NOAA, reviewed this rule in accordance with Executive Order 12291 and determined that it is not a "major rule" requiring a regulatory impact analysis. This determination was made because this action is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The General Counsel of the Department of Commerce certifed to the Small Business Administration that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This is because the rule will not have a direct regulatory impact on the general public, industry, or small businesses since it only establishes procedures and requirements for preparing an application for a council charter and for conducting activities necessary to establish and operate species-specific seafood marketing councils. The rule does not require industry action and does not impose significant direct costs on small entities. Therefore, a regulatory flexibility analysis has not been prepared. If individuals do decide to take action under the Act, it would be done on a voluntary basis and any costs for consulting with members of the industry on the application would likely be minor. It is unlikely that the costs would be so great as to affect a firm's financial condition, cash flow position, liquidity position, or its ability to remain in the industry.

Individual councils, once established, may have an impact on small entities, but this cannot be determined prior to receipt of an application for a proposed charter with ranges of assessments based on volume, income, etc., of sector participants to be involved in a council. Specifically, the imposition of assessments on certain members of the industry could have an effect on a firm's financial situation. Any other costs or requirements that would impose a cost on industry would also have to be considered and analyzed. Since these parameters will vary with each application, a determination of impact will be made on a case-by-case basis as applications for council charters are received. If a significant economic effect on a substantial number of small entities is involved, the agency will prepare initial and final regulatory flexibility analyses.

This rule is being made effective immediately upon publication. Since the rule establishes procedures and requirements for preparing applications for charters and for conducting activities necessary to establish and operate species-specific seafood marketing councils, it is not a substantive rule for which section 553(d) of the Administrative Procedure Act requires a 30-day delay in effective date.

The information collection requirements subject to the Paperwork Reduction Act (PRA) contained in this rule have been approved by the Office of Management and Budget under Control Number 0648–0215. The estimated reporting time for the collection requirement in § 270.3 is 320 hours, with an average of 320 hours per response. All other information requirements in the rule are imposed on the councils, once they are established. The estimated reporting time for these information requirements varies from 1 to 160 hours per response, with an average reporting time of 6.9 hours per responses. These estimated reporting times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this information collection and estimate of reporting time, including suggestions for reductions, should be sent to both the Office of Trade and Industry Services, National Marine Fisheries Service, NOAA, 1335 East-West Highway, Silver Spring, Maryland 20910 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Paperwork Reduction Project 0648–0215, Washington, DC 20503.

This rule does not have the potential for a significant effect on the environment and is therefore exempt from the preparation of either an environmental impact statement or environmental assessment under the National Environmental Policy Act of 1969.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 270

Administrative practice and procedure, Fish, Marketing and Seafood.

For the reasons set out in the preamble, title 50 CFR chapter II is amended as follows:

1. Subchapter H consisting of parts 280, 281, 282, and 285; subchapter I consisting of part 290; subchapter J consisting of part 296; and subchapter K consisting of part 299 are redesignated as subchapters I, J, K, and L, respectively.

2. A new subchapter H, consisting of part 270, is added to read as follows:

SUBCHAPTER H—FISH AND SEAFOOD PROMOTION

PART 270—SPECIES-SPECIFIC SEAFOOD MARKETING COUNCILS

Sec.

Authority: 16 U.S.C. 4001–4017.

§ 270.1 Scope.

This part describes matters pertaining to the establishment, representation, organization, practices, and procedures of seafood marketing councils.

§ 270.2 Definitions.

The following terms and definitions are in addition to or amplify those contained in the Fish and Seafood Promotion Act of 1986:

Act means the Fish and Seafood Promotion Act of 1986 (Pub. L. 99-659) and any subsequent amendments.

Consumer education means actions undertaken to inform consumers of matters related to the consumption of fish and fish products.

Council means a seafood marketing council for one or more species of fish and fish products of that species established under Section 210 of the Act (16 U.S.C. 4009).

Fiscal year means any 12-month period as shall be recommended by a council and approved by the Secretary.

Fish means finfish, mollusks, crustaceans, and all other forms of aquatic animal life used for human consumption; the term does not include marine mammals and seabirds.

Harvester means any person in the business of catching or growing fish for purposes of sale in domestic or foreign markets.

Importer means any person in the business of importing fish or fish products from another country into the United States and its territories, as defined by the Act, for commercial purposes, or who acts as an agent, broker, or consignee for any person or nation that produces, processes or markets fish or fish products outside of the United States for sale or for other commercial purposes in the United States.

Marketer means any person in the business of selling fish or fish products in the wholesale, export, retail, or restaurant trade, but whose primary business function is not the processing or packaging of fish or fish products in preparation for sale.

Marketing and promotion means any activity aimed at encouraging the consumption of fish or fish products or expanding or maintaining commercial markets for fish or fish products.

National Council means the National Fish and Seafood Promotional Council established by Section 205 of the Act (16 U.S.C. 4004).

Processor means any person in the business of preparing or packaging fish or fish products (including fish of the processor's own harvesting) for sale in domestic or foreign markets.

Receiver means any person who owns fish processing vessels and any person in the business of acquiring (taking title to) fish directly from harvesters.

Research means any type of research designed to advance the image, desirability, usage, marketability, production, quality and safety of fish and fish products.

Secretary means the Secretary of Commerce, or the Secretary's designee.

Sector participant means any individual, group of individuals, association, proprietorship, partnership, corporation, cooperative, or any private entity of the U.S. fishing industry organized or existing under the laws of the United States or any State, commonwealth, territory or possession of the United States who meets the eligibility requirements as defined in a proposed charter to vote in a referendum.

Species means a fundamental category of taxonomic classification, ranking after genus, and consisting of animals that possess common characteristic(s) distinguishing them from other similar groups.

Value means monetary or material worth of fishery products. Value is determined at the point a receiver obtains product from a harvester or an importer obtains product from a foreign supplier. Value may be expressed in monetary units (the price a receiver pays to a harvester or an importer pays to a foreign supplier) or it may be expressed in units of weight or volume (pounds, gallons, etc.).

§ 270.3 Submission of application.

(a) Persons who meet the minimum requirements for sector participants, as described in the proposed charter, may file an application with the Secretary for a charter for a seafood marketing council for one or more species of fish and fish products of that species. One signed original and two copies of the completed application must be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, NOAA, 1335 East-West Highway, Silver Spring, Maryland 20910. Applications should not be bound.

(b) The application consists of three parts:

(1) A petition or document requesting the Secretary to establish a council;

(2) A proposed charter under which the proposed council will operate; and

(3) A list of eligible referendum participants.

(c) Content of application.

(1) *Petition or requesting document.* The petition or requesting document submitted by the applicants to the Secretary requesting that the council be established, to the extent practicable, must include the signatures or corporate certifications, of no less than three sector participants representing each sector identified in accordance with paragraph (c)(2)(v) of this section and who, according to the available data, collectively accounted for, in the 12-month period immediately preceding the month in which the application was filed, not less than 10 percent of the value of the fish or fish products specified in the charter that were handled during such period in each sector by those who meet the eligibility requirements to vote in the referendum as defined by the petitioners. The petition or requesting document must also include a statement that, if established, the council will have sufficient resources, (e.g., cash, donated office space, services, supplies, etc.), available for initial administrative expenditures pending collection of assessments.

(2) *Proposed charter*—A proposed charter must contain, at a minimum, the following information:

(i) The name of the council and a provision proclaiming its establishment;

(ii) A declaration of the purposes and objectives of the council;

(iii) A description of the species of fish and fish products, including the scientific and common name(s), for which the council will implement marketing and promotion plans under the Act. (The American Fisheries Society's "List of Common and Scientific Names of Fishes from the United States and Canada" (latest edition) or where available, an appropriate volume of its "List of Common and Scientific Names of Aquatic Invertebrates of the United States and Canada" (latest edition) should be used as the authority for all scientific and common names;

(iv) A description of the geographic area (State(s)) within the United States covered by the council;

(v) The identification of each sector and the number and terms of representatives for each sector that will be voting members on the council. (The number of council members should be manageable, while ensuring equitable geographic representation. The term for members shall be 3 years. Initially, to ensure continuity, half of the members' terms shall be 2 years and half shall be 3 years. Reappointments are permissible);

(vi) The identification of those sectors (which must include a sector consisting of harvesters, a sector consisting of receivers, and, if subject to assessment, a sector consisting of importers), eligible to vote in the referendum to establish the council;

(vii) For each sector described under paragraph (c)(2)(v) of this section, a threshold level specifying the minimum requirements, as measured by income, volume of sales, or other relevant factors, that a person engaging in

business in the sector must meet in order to participate in a referendum;

(viii) A description of the rationale and procedures for determining assessment rates under Section 213 of the Act (16 U.S.C. 4012), based on a fixed amount per unit of weight or measure, or on a percentage of cost of the product handled;

(ix) The proposed rate or rates that will be imposed by the council on receivers and, if subject to assessment, importers during its first year of operation;

(x) The maximum amount by which an assessment rate for any period may be raised above the rate applicable for the immediately preceding period;

(xi) The maximum rate or rates that can be imposed by a council on receivers or importers during the operation of the council;

(xii) The maximum limit on the amount any one sector participant may be required to pay under an assessment for any period;

(xiii) The procedures for providing refunds, including interest earned, to sector participants subject to assessment who request the same in accordance with the time limits specified in Section 215 of the Act (16 U.S.C. 4014);

(xiv) A provision setting forth the voting procedures by which votes may be cast by proxy;

(xv) A provision that the council will have voting members representing the harvesting, receiving and, if subject to assessment, importing sectors;

(xvi) A provision setting forth the definition of a quorum for making decisions on council business and the procedures for selecting a chairperson of the council; and

(xvii) A provision that members of the council will serve without compensation, but will be reimbursed for reasonable expenses incurred in performing their duties as members of the council.

(3) *List of referendum participants.* The list of referendum participants, to the extent practicable, must identify the business name and address of all sector participants that the applicants believe meet the requirements for eligibility to vote in the referendum on the adoption of the proposed charter. The list should include all sectors in which a sector participant meets the eligibility requirements to vote in a referendum. If a sector participant has more than one place of business located within the geographic area of the council, all such places should be listed and the primary place of business should be designated. The agency will provide appropriate information in its possession of a non-proprietary nature to assist the petitioners in developing the list of sector participants.

(Approved by the Office of Management and Budget under control number 0648–0215)

§ 270.4 Review of application.

Within 180 days of receipt of the application to establish a council, the Secretary will:

(a) Determine if the application is complete and complies with all of the requirements set out in § 270.3 of this part and complies with all provisions of the Act and other applicable laws.

(b) Identify, to the extent practicable, those sector participants who meet the requirements for eligibility to participate in the referendum to establish the council. The Secretary may require additional information from the applicants or proposed participants in order to verify eligibility. The Secretary may add names to or delete names from the list of sector participants believed eligible by the applicants until the time of the referendum based on additional information received.

(c) If the Secretary finds minor deficiencies in an application that can be corrected within the 180-day review period, the Secretary will advise the applicants in writing of what must be submitted by a date certain to correct the deficiencies.

(d) If the Secretary makes a final negative determination, on an application, the Secretary will advise the applicants in writing of the reason for the determination. The applicants may submit another application at any time thereafter. The Secretary then has 180 days from receipt of the new application to render a final determination on its acceptability.

§ 270.5 Conduct of referendum.

(a) Upon making affirmative determinations under § 270.4 of this part, the Secretary, within 90 days after the date of the last affirmative determination, shall conduct a referendum on the adoption of the proposed charter. The Secretary will estimate the cost of conducting the referendum, notify the applicants, and request that applicants post a bond or provide other applicable security, such as a cashier's check, to cover costs of the referendum. A written agreement between the petitioners and the National Fish and Seafood Promotional Council to fund the referendum is also considered acceptable security. The Secretary will initially pay all costs of a referendum to establish a council. Within 2 years after establishment, the council must reimbuse the Secretary for the total actual costs of the referendum from assessments collected by the council. If a referendum fails to result in establishment of a council, the Secretary will immediately recover all expenses incurred for conducting the referendum from the bond or security posted by applicants. In either case, such expenses will not include salaries of Government employees or other administrative overhead, but will be limited to those additional direct costs incurred in connection with conducting the referendum. Costs associated with each referendum may vary according to the number of sector participants and locations, and whether a public meeting is requested.

(b) No less than thirty (30) days prior to holding a referendum, the Secretary will—

(1) Publish (by such means that will result in wide publicity in regions affected by the proposed charter) the text of the proposed charter and the most complete list available of sector participants eligible to vote in the referendum; and

(2) Provide for public comment, including the opportunity for a public meeting.

§ 270.6 Sector participants eligible to vote.

(a) Any participant who meets the minimum requirements as measured by income, volume of sales or other relevant factors specified in the approved charter may vote in a referendum.

(b) Only one vote may be cast by each participant who is eligible to vote, regardless of the number of individuals that make up such "participant" and how many sectors the participant is engaged in. The vote may be made by any responsible officer, owner, or employee representing a participant.

§ 270.7 Results of referendum.

(a) *Favorable vote to establish council.* The Secretary will, by order, establish the council and approve the proposed charter, if the referendum votes which are cast in favor of the proposed charter constitute a majority of the sector participants voting in each and every sector. Further, according to the best available data, the majority must collectively account for, in the 12-month period immediately preceding the month in which the proposed charter was filed, at least 66 percent of the value of the fish and fish products described in the proposed charter handled during such period in each sector by those who meet the eligibility requirements to vote in the referendum as defined by the petitioners.

(b) *Unfavorable vote to establish council.* If a referendum fails to pass in any sector of the proposed council, the Secretary will not establish the council or approve the proposed charter. The Secretary shall immediately recover the cost of conducting the referendum according to Section 270.5(a) of this part.

(c) *Notification of referendum results.* The Secretary will notify the applicants of the results of the referendum and publish the results of the referendum in the **Federal Register** and local media of the geographic area of the proposed council.

§ 270.8 Nomination of council members.

Within 30 days after a council is established, the Secretary will solicit nominations for council members from the sectors represented on the council in accordance with the approved charter. If the harvesters and receivers represented on the council are engaged in business in two or more States, but within the geographic area of the council, the nominations made under this section must, to the extent practicable, result in equitable representation for those States. Nominees must be knowledgeable and experienced with regard to the activities of, and be or have been actively engaged in the business of, the sector that such person will represent on the council. Therefore, a résumé will be required for each nominee.

§ 270.9 Vacancies and removal of council members.

(a) A vacancy on a council will be filled, within 60 days after the vacancy occurs, in the same manner in which the original appointment was made. A member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed will be appointed only for the remainder of such term.

(b) Any person appointed under the Act who consistently fails or refuses to perform his or her duties properly and/or participates in acts of dishonesty or willful misconduct with respect to responsibilities under the Act will be removed from the council by the Secretary if two-thirds of the members of the council recommend action. All requests from a council to the Secretary for removal of a council member must be in writing and accompanied by a statement of the reasons upon which the recommendation is based.

§ 270.10 Notice of council meetings.

The council shall give the Secretary the same notice of its meetings as it gives to its members.

§ 270.11 Books, records and reports.

The council must maintain books and records for a minimum of 3 years, prepare and submit to the Secretary semi-annually a progress report on implementation of the marketing and promotion plan and a financial report with respect to the receipt and disbursement of funds entrusted to it, and cause a complete audit report to be conducted by an independent public accountant and submitted to the Secretary at the end of each fiscal year.

§ 270.12 Update of sector participant data.

The council shall submit to the Secretary at the end of each fiscal year an updated list of sector participants who meet the minimum requirements for eligibility to participate in a referendum as stated in the approved charter.

§ 270.13 Quality standards.

Each council may—

(a) Develop and submit to the Secretary for approval, or upon the request of a council the Secretary will develop quality standards for the species of fish or fish products described in the approved charter. Any quality standard developed under this paragraph must be consistent with the purposes of the Act.

(b) A quality standard developed under paragraph (a) of this section may be adopted by a council by a majority of its members following a referendum conducted by the council among sector participants of the concerned sector(s). In order for a quality standard to be brought before council members for adoption, the majority of the sector participants of the concerned sector(s) must vote in favor of the standard. Further, according to the best available data, the majority must collectively account for, in the 12-month period immediately preceding the month in which the referendum is held, not less than 66 percent of the value of the fish or fish products described in the charter that were handled during such period in that sector by those who meet the eligibility requirements to vote in the referendum as defined by the petitioners.

(c) The council must submit a plan to conduct the referendum on the quality standards to the Secretary for approval at least 60 days in advance of such referendum date. The plan must consist of the following:

(1) Date(s) for conducting the referendum;

(2) Method (by mail or in person);

(3) Copy of the proposed notification to sector participants informing them of the referendum;

(4) List of sector participants eligible to vote;

(5) Name of individuals responsible for conducting the referendum;

(6) Copy of proposed ballot package to be used in the referendum; and

(7) Date(s) and location of ballot counting.

(d) An official observer appointed by the Secretary shall be allowed to be present at the ballot counting and any other phase of the referendum process, and may take whatever steps the Secretary deems appropriate to verify the validity of the process and results of the referendum.

(e) Quality standards developed under this section of the regulations must, at a minimum, meet Food and Drug Administration (FDA) minimum requirements for fish and fish products for human consumption.

(f) Quality standards must be consistent with applicable standards of the U.S. Department of Commerce (National Oceanic and Atmospheric Administration) for fish and fish products.

(g) No quality standard adopted by a council may be used in the advertising or promotion of fish or fish products as being inspected by the United States Government unless the standard requires sector participants to be in the U.S. Department of Commerce voluntary seafood inspection program.

(h) The intent of quality standards must not be to discriminate against importers who are not members of the council.

(i) Quality standards must not be developed for the purpose of creating non-tariff barriers. Such standards must be compatible with U.S. obligations under the General Agreement on Tariffs and Trade.

(j) The procedures applicable to the adoption and the operation of quality standards developed under this subsection also apply to subsequent amendments or the termination of such standards.

(k) With respect to a quality standard adopted under this section, the council must develop and file with the Secretary an official identifier in the form of a symbol, stamp, label or seal that will be used to indicate that a fish or fish product meets the quality standard at the time the official identifier is affixed to the fish or fish product, or is affixed to or printed on the packaging material of the fish or fish product. The use of such identifier is governed by § 270.14 of this part.

§ 270.14 [Reserved]

§ 270.15 Deposit of funds.

All funds collected or received by a council under this section must be deposited in an appropriate account in the name of the council specified in its charter. Funds eligible to be collected or received by a council must be limited to those authorized under the Act.

(a) Pending disbursement, under an approved marketing plan and budget, funds collected through assessments authorized by the Act must be deposited in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States Government.

(b) The council may, however, pending disbursement of these funds, invest in risk-free, short-term, interest-bearing instruments.

(1) Risk-free. All investments must be insured or fully collateralized with Federal Government securities. In the absence of collateral, accounts established at financial institutions should, in aggregate, total less than $100,000 to assure both principal and interest are Federally insured in full.

(2) Short-term. Generally, all investments should be for a relatively short time period (one year or less) to assure that the principal is maintained and readily convertible to cash.

(3) Collateralization. Investments exceeding the $100,000 insurance coverage level must be fully collateralized by the financial institution.

(i) Collateral must be pledged at face value and must be pledged prior to sending funds to the institution.

(ii) Government securities are acceptable collateral. Declining balance, mortgage backed securities such as Government National Mortgage Association (GNMA) and Federal National Mortgage Association (FNMA) are not acceptable collateral.

(iii) If an account has been established, collateral may be held at the local Federal Reserve bank. Otherwise another depository must hold the collateral.

§ 270.16 Method of imposing assessments.

Assessments shall be imposed on sector participants in the receiving sector or the importing sector or both as specified in an approved council charter. Assessment rates will be based on value which may be expressed in monetary units or units of weight or volume.

(a) An assessment on sector participants in the receiving sector shall be in the form of a percentage of the cost or a fixed amount per unit of weight or volume of the fish described in the charter when purchased by such receivers from fish harvesters.

(b) An assessment on sector participants who own fish processing vessels and harvest the fish described in the charter shall be in the form of a percentage of the cost or on a fixed amount per unit of weight or volume of the fish described in the charter that is no less than the value if such fish had been purchased by a receiver other than the owner of the harvesting vessel.

(c) An assessment on sector participants in the importing sector shall be in the form of a percentage of the cost that an importer pays to a foreign supplier, as determined for the purposes of the customs laws, or a fixed amount per unit of weight or volume, of the fish or fish products described in the charter when entered or withdrawn from warehouse for consumption, in the customs territory of the United States by such sector participants.

§ 270.17 Notice of assessment.

(a) The council must serve each person subject to assessment with notice that the assessment is due. The notice of assessment must contain:

(1) A specific reference to the provisions of the Act, regulations, charter and referendum that authorize the assessment;

(2) The amount of the assessment;

(3) The period of time covered by the assessment;

(4) The date the assessment is due and payable, which shall not be earlier than 30 days from the date of the notice;

(5) The form(s) of payment; and

(6) To whom and where the payment must be made.

(b) The notice must advise such person of his or her right to seek review of the assessment by filing a written petition of objection with the Secretary at any time during the time period to which the assessment (or the marketing and promotion plan) applies, including the right to request a hearing on the petition. The notice must state that the petition must be filed in accordance with the procedures in § 270.19 of this part.

(c) The notice must also advise such persons of his or her right to a refund of the assessment as provided in § 270.20 of this part. The notice must state that refunds may only be requested for a period covering 90 days or more from the date the assessment is collected and the council will make the refund within 60 days from the date of the demand.

§ 270.18 Payment of assessments.

Persons subject to an assessment must pay the assessment on the date due, whether or not they have demanded a refund or filed a petition of objection with the Secretary under § 270.19 of this part.

§ 270.19 Petition of objection.

(a) *Filing a petition.* Any person issued a notice of assessment under Section 270.17 of this part may request the Secretary to modify or take other appropriate action regarding the assessment or plan by filing a written petition with the Secretary. Petitions of objection may be filed only upon one or more of the following grounds. That—

(1) the assessment;

(2) the marketing and promotion plan on which the assessment was based; or

(3) any obligation imposed on the petitioner under the plan,

is not in accordance with law. Filing a petition does not relieve the petitioner of the obligation to pay the assessment when it is due. A petition may be filed only during the time period to which the assessment, or the marketing a promotion plan, applies.

(b) *Contents of petition.* A petition must be addressed to the Secretary, U.S. Department of Commerce, Washington, DC 20230, and must contain the following:

(1) The petitioner's correct name, address, and principal place of business. If the petitioner is a corporation, this must be stated, together with the date and state of incorporation, and the names, addresses, and respective positions of its officers; if a partnership, the date and place of formation and the name and address of each partner;

(2) The grounds upon which the petition is based, including the specific terms or provisions of the assessment, the marketing and promotion plan, or obligation imposed by the plan, to which the petitioner objects;

(3) A full statement of the facts upon which the petition is based, set forth clearly and concisely, accompanied by any supporting documentation;

(4) The specific relief requested; and

(5) A statement as to whether or not the petitioner requests a hearing.

(c) *Notice to Council.* The Secretary will promptly furnish the appropriate council with a copy of the petition.

(d) *Opportunity for informal hearing.*

(1) Any person filing a petition may request an informal hearing on the petition. The hearing request must be submitted with the petition.

(2) If a request for hearing is timely filed, or if the Secretary determines that a hearing is advisable, the Secretary will so notify the petitioner and the council. The petitioner, the council, and any other interested party, may appear at the hearing in person or through a representative, and may submit any relevant materials, data, comments, arguments, or exhibits. The Secretary may consolidate two or more hearing requests into a single proceeding.

(3) Final Decision. Following the hearing, or if no hearing is held, as soon as practicable, the Secretary will decide the matter and serve written notice of the decision on the petitioner and the council. The Secretary's decision will be based on a consideration of all relevant documentation and other evidence submitted, and will constitute the final administrative decision and order of the agency.

§ 270.20 Refunds.

(a) Notwithstanding any other provision of the Act, any person who pays an assessment under the Act may demand and must promptly receive from the council a refund of such assessment, including interest earned. A demand for refund must be made in accordance with procedures in the approved charter and within such time as will be prescribed by the council and approved by the Secretary. Procedures to provide such a refund must be established before any such assessment may be collected. Such procedures must allow any person to request a refund 90 days or more from such collection, and provide that such refund must be made within 60 days after demand for such refund is made.

(b) Once a refund has been requested by a sector participant and paid by the council, that sector participant may no longer participate in a referendum or other business of the council during the remainder of the assessment rate period. However, if assessments are paid during a future assessment rate period and no refund is requested, that sector participant may again participate in a referendum or other business of the council.

§ 270.21 Dissolution of councils.

If a referendum conducted under section 216 of the Act (16 U.S.C. 4015) results in the requisite number of votes cast in favor of terminating a council, the Secretary shall by order terminate the council subject to such terms and conditions as necessary to ensure that all remaining affairs of the council are concluded on an orderly basis.

Dated: November 30, 1989.

James E. Douglas,

Acting Assistant Administrator for Fisheries.

[FR Doc. 89-28423 Filed 12-6-89; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 234
Thursday, December 7, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Reg. B; EC-1]

Equal Credit Opportunity; Proposed Update to Official Staff Commentary

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed official staff interpretation.

SUMMARY: The Board is publishing for comment proposed revisions to the official staff commentary to Regulation B (Equal Credit Opportunity). The commentary applies and interprets the requirements of Regulation B and is a substitute for individual staff interpretations of the regulation. The proposed revisions include interpretations of the final rule amending Regulation B to implement Equal Credit Opportunity Act amendments on business credit (published elsewhere in this **Federal Register**) as well as interpretations about data collection.

DATE: Comments must be received on or before February 7, 1990.

ADDRESSES: Comments should refer to Docket No. EC-1 and be sent to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, or delivered to Room B-2222 of the Eccles Building between 8:45 and 5:15 p.m. weekdays or the guard station in the Eccles Building Courtyard entrance on 20th Street NW. (between Constitution Avenue and C Street, NW.) any time. All comments received at the above address will be available for inspection and copying by any member of the public in the Freedom of Information Office, Room B-1122 of the Eccles Building, between 9:00 a.m. and 5:00 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: In the Division of Consumer and Community Affairs, Adrienne D. Hurt, Senior Attorney, or Jane Ahrens, Staff Attorney, at (202) 452-2412; for the hearing impaired only, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD), at (202) 452-3544, Board of Governors of the Federal Reserve System, Washington DC 20551.

SUPPLEMENTARY INFORMATION:

(1) General

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691-1691f, makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, age, receipt of public assistance, or the exercise of rights under the Consumer Credit Protection Act. This statute is implemented by the Board's Regulation B (12 CFR part 202).

The Board has published an official staff commentary (12 CFR part 202 (Supp. I)) to interpret the regulation. The commentary provides guidance to creditors in applying the regulation to specific transactions, and is updated periodically to address significant questions that arise. This notice contains the proposed fourth update, which the Board expects to adopt in final form in March 1990.

(2) Proposed Revisions

Most of the proposed revisions to the commentary interpret the final rule amending Regulation B to implement ECOA amendments primarily concerning business credit that were part of the Women's Business Ownership Act of 1988, Public Law No. 100-533, 102 Stat. 2689. (The final rule is published elsewhere in this **Federal Register**.) Other proposed revisions to the commentary address questions that have arisen about data collection, including some related to amendments to the Home Mortgage Disclosure Act and Regulation C.

Section 202.2—Definitions

2(g) Business Credit

In the recent amendments to the regulation, the definition of business credit has been moved from § 202.3(d)(1) to § 202.2(g). Accordingly, comment 3(d)-1 would be redesignated comment 2(g)-1.

Section 202.3—Limited Exceptions for Certain Classes of Transactions

3(d) Government Credit

In the recent amendments to the regulation, § 202.3(e) has been redesignated § 202.3(d). Accordingly, comment 3(e)-1 on governmental credit would be redesignated comment 3(d)-1.

Section 202.5—Rules Concerning Taking of Applications

5(b) General Rules Concerning Requests for Information

Paragraph 5(b)(2). Comment 5(b)(2)-1 would be added to clarify that the term "state law," as used in § 202.5 (b)(2), includes the requirements of any political subdivision thereof. For example, a creditor may request, pursuant to a local ordinance, information required for monitoring purposes that is otherwise prohibited by § 202.5 (c) and (d). Comment 5(b)(2)-2 would be added to clarify that a lender exempt from certain reporting requirements under the Home Mortgage Disclosure Act but which voluntarily collects the information in accordance with the requirements of that act and Regulation C may do so without violating the ECOA.

Section 202.9—Notifications

9(a) Notification of Action taken, ECOA Notice, and Statement of Specific Reasons

Paragraph 9(a)(3). Section 202.9(a)(3), added by the recent amendments to the regulation, contains the rules for providing notifications on business credit applications. Comments 9(a)(3)-1 through -4 would give creditors further guidance in complying with this paragraph.

Section 202.10—Furnishing of Credit Information

Comment 10-1 would be revised to clarify that the scope of the section is intended to govern consumer credit only. The section addresses consumer credit accounts where credit histories were typically reported only in the husband's name, and married women who became divorced or widowed were left with no credit history. The section was not intended to apply to individual business credit applicants such as sole proprietors.

Section 202.13—Information for Monitoring Purposes

A cross reference to the commentary to § 202.5(b)(2) would be added as comment 13(a)–7.

List of Subjects in 12 CFR Part 202

Banks; Banking: Civil rights; Consumer protection; Credit; Federal Reserve System; Marital status discrimination; Minority groups; Penalties; Religious discrimination; Sex discrimination; Women.

(3) Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold-faced arrows, while language that would be removed is set off with brackets.

Pursuant to authority granted in section 703 of the Equal Credit Opportunity Act (15 U.S.C. 1691b), the Board proposes to amend the official staff commentary to Regulation B (12 CFR part 202 Supp. I) as follows:

PART 202—[AMENDED]

1. The authority citation for part 202 continues to read as follows:

Authority: 15 U.S.C. 1691–1691f.

2. In § 202.2, comment 2(g)–1 and a heading would be added to read as follows:

§ 202.2 Definitions.

* * * * *

►*2(g) Business Credit.*

1. *Definition.* The test for deciding whether a transaction qualifies as business credit is one of primary purpose. For example, an open-end credit account used for both personal and business purposes is not business credit unless the primary purpose of the account is business-related. A creditor may rely on an applicant's statement of the purpose for the credit requested.◄

* * * * *

3. In § 202.3, comment 3(e)–1 and the heading and comment 3(d)(3)–1 would be removed; comment 3(d)–1 and the heading would be revised to read as follows:

§ 202.3 Limited exceptions for certain classes of transactions.

* * * * *

3(d) ►*Government Credit*—1. *Credit to governments.* The exception relates to credit extended to (not by) governmental entities. For examples, credit extended to local government by a creditor in the private sector is covered by this exception, but credit extended to consumers by a federal or state housing agency does not qualify for special treatment under this category.◄

* * * * *

4. In § 202.5, comments 5(b)(2)–1 and 5(b)(2)–2 and a heading would be added to read as follows:

§ 202.5 Rules concerning taking of applications.

* * * * *

5(b) General rules concerning requests for information.

* * * * *

►*Paragraph 5(b)(2)*

1. *Local laws.* Information that may be collected pursuant to a state statute or regulation includes information required by a local statute, regulation, or ordinance.

2. *Information required by Regulation C.* Regulation C generally requires creditors covered by the Home Mortgage Disclosure Act to collect and report information about the race or national origin and sex of applicants for home improvement loans and home purchase loans, including some transactions not covered by § 202.13. A creditor with assets under $30 million is not required to collect and report these data but may do so at its option under Regulation C without violating the ECOA or Regulation B.◄

* * * * *

5. In § 202.9, comments 9(a)(3)–1 through 9(a)(3)–4 and a heading would be added to read as follows:

§ 202.9 Notifications.

* * * * *

9(a) Notification of action taken, ECOA notice, and statement of specific reasons.

* * * * *

►*Paragraph 9(a)(3)*

1. *Coverage.* Application of the rules in this paragraph generally depend on the revenue size of a business credit applicant. A creditor may rely on the applicant's assertions about the revenue size of a business. Applications to start a business and applications by individuals applying for business-purpose credit are governed by the rules in § 202.9(a)(3)(i).

2. *Trade credit.* The term "trade credit" generally involves financing between a seller and a buyer of inventory or equipment.

3. *General compliance.* In complying with the notice provisions of the act and regulation, creditors offering business credit may follow the rules governing nonbusiness credit. Similarly, creditors may elect to treat all business credit the same (irrespective of revenue size) by providing notice and keeping records in accordance with § 202.9(a)(3)(i).

4. *Timing of notification.* Under § 202.9(a)(3)(ii)(A), a creditor is required in all cases to notify a business credit applicant, orally or in writing, of action taken on an application within a reasonable time of receiving a completed application. Notice provided in accordance with the timing requirements of § 202.9(a)(1) is deemed reasonable in all instances.◄

* * * * *

6. In § 202.10, comment 10–1 would be revised to read as follows:

§ 202.10 Furnishing of credit information.

1. *Scope.* The requirements of § 202.10 for designating and reporting credit information apply only to creditors that furnish credit information ►about consumer credit transactions◄ to credit bureaus or to other creditors. There is no requirement that a creditor furnish credit information on its accounts.

* * * * *

7. In § 202.13, comment 13(a)–7 would be added to read as follows:

§ 202.13 Information for monitoring purposes

13(a) Information to be requested.

* * * * *

►7. *Data collection under Regulation C.* See comment 5(b)(2)–2.◄

Board of Governors of the Federal Reserve System, December 1, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–28551 Filed 12–6–89; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–NM–223–AD]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 series airplanes, which would require repetitive inspections to detect cracks in the outer shroud box aft hinge brackets, repair if necessary, and eventual modification. This proposal is

prompted by reports of cracks found during routine maintenance checks. This condition, if not corrected, could lead to failure of these brackets and subsequent structural and system damage to the airplane.

DATE: Comments must be received no later than January 28, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-223-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 431-1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking actions on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-223-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Direction Générale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Airbus Industrie Model A300 series airplanes. There have been numerous reports of cracks found in outer shroud box aft hinge brackets during routine maintenance. Bracket failure may cause vertical movement of the inboard shroud box structure in the immediate area and subsequent fouling of the inboard flap top skin. This contact would be progressively loaded during airbrake deployment. When a bracket fails, the loads may transfer to the remaining supports and they may also eventually crack. This condition, if not corrected, could lead to complete failure of the aft hinge brackets and subsequent structural and system damage.

Airbus Industrie has issued Service Bulletin A300-57-142, dated December 17, 1986, which describes procedures for repetitive close visual inspections to detect cracks in the outer shroud box aft hinge brackets; and Service Bulletin A300-57-143, Revision 2, dated July 10, 1989, which describes procedures to replace the existing aluminum alloy brackets with new steel brackets (Modification 6661H1033). Accomplishment of this modification (replacement) terminates the need for the repetitive inspections. The French DGAC has classified these service bulletins as mandatory, and has issued Airworthiness Directive 89-091-094(B)R1, dated July 19, 1989, addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive inspections to detect cracks in the outer shroud box aft hinge brackets, repair if necessary, and eventual modification, in accordance with the service bulletins previously described.

It is estimated that 66 airplanes of U.S. registry would be affected by this AD, that it would take approximately 4 manhours per airplane to accomplish the required inspection and 27 manhours to accomplish the modification, and that the average labor cost would be $40 per manhour. The estimated cost for the modification kit is $4,840. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $401,280.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 6, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 series airplanes, as listed in Airbus Industrie Service Bulletin A300-57-142, dated December 17, 1986, certificated in any category. Compliance is requried as indicated, unless previously accomplished.

To prevent failure of the outer shroud box aft hinge brackets, accomplish the following:

A. Prior to the accumulation of 5,000 landings or within the next 300 landings after the effective date of the AD, whichever occurs later, and thereafter at intervals not to exceed 1,000 landings, perform a close visual inspection to detect cracks in the outer

shroud box aft hinge brackets, in accordance with Airbus Industrie Service Bulletin A300–57–142, dated December 17, 1986.

B. If cracks are detected, prior to further flight, perform a close visual inspection to detect cracks or damage in the remaining supports (shroud box forward hinge brackets, inner shroud box forward attachments, and the attachment brackets at the inboard end of the inner box shroud box), the inner and outer shroud box structure in the vicinity of the failed bracket, and the top skin of the inboard flap, in accordance with the service bulletin.

1. If cracks or damage are found in the remaining supports, the inner and outer shroud box structure, or top skin of the inboard flap, repair prior to further flight, in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

2. Replace any cracked or failed brackets prior to further flight with improved aft hinge brackets, in accordance with Airbus Industrie Service Bulletin A300–57–143, Revision 2, dated July 10, 1989.

C. Within two years after the effective date of this AD, replace all existing aluminum alloy brackets with new improved steel brackets (Modification 6661H1033), in accordance with Airbus Industrie Service Bulletin A300–57–143, Revision 2, dated July 10, 1989. The repetitive inspections required by paragraph A., above, may be terminated following the replacement with the new steel brackets (Modification 6661H1033).

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on November 28, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–28568 Filed 12–6–89; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–542; RM–6695]

Radio Broadcasting Services; Monroeville, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Monroe Broadcasting Company, Inc., licensee of Station WMFC–FM, Channel 257A, Monroeville, Alabama, seeking the substitution of FM Channel 257C2 for Channel 257A and modification of its license accordingly. Coordinates for this proposal are 31–30–51 and 87–17–55.

DATES: Comments must be filed on or before November 15, 1990, and reply comments on or before December 4, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Jeffrey D. Southmayd, Esq., Southmayd Powell & Taylor, 1764 Church Street NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–542, adopted November 15, 1989, and released December 4, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public shoud note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–28619 Filed 12–6–89; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 54, No. 234
Thursday, December 7, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Agriculture Biotechnology Research Advisory Committee Meeting

In accordance with the Federal Advisory Committee Act of October 1972 (Pub. L. No. 92–463, 86 Stat. 770–776), the U.S. Department of Agriculture (USDA), Science and Education, announces the following advisory committee meeting:

Name: Agriculture Biotechnology Research Advisory Committee.

Date: January 10, 11, and 12, 1990.

Time:

9 a.m. to approximately 5 p.m. on January 10.

9 a.m. to approximately 5 p.m. on January 11.

9 a.m. to approximately 1 p.m. on January 12.

Place: Room 104–A, the "Williamsburg Room", USDA Adminstration Building, 14th and Independence Avenue SW., Washington, DC.

Type of Meeting: This meeting is open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person specified below.

Purpose: To review matters pertaining to agricultural biotechnology research and to develop advice for the Secretary through the Assistant Secretary for Science and Education with respect to policies, programs, operations and activities associated with the conduct of agricultural biotechnology research. The major items to be considered at this meeting are the development of biosafety guidelines for biotechnology research in agriculture and research priorities for agricultural biotechnology.

Contact Person: Dr. Alvin L. Young, Executive Secretary, Agricultural Biotechnology Research Advisory Committee, U.S. Department of Agriculture, Office of Agricultural Biotechnology, room 321–A, Administration Building, 14th and Independence Avenue SW., Washington, DC 20250. Telephone (202 447–9165.

Done at Washingotn, DC, this 20th day of November, 1989.

Charles E. Hess,

Assistant Secretary, Science and Education.

[FR Doc. 89–28606 Filed 12–6–89; 8:45 am]

BILLING CODE 3410–22–M

Federal Grain Inspection Service

Invitation To Serve on Federal Grain Inspection Service Advisory Committee

Under authority of section 20 of the United States Grain Standards Act (Act), the Secretary of Agriculture established the Federal Grain Inspection Service Advisory Committee (Advisory Committee) on September 29, 1981. Public Law 100–518 extended the authority for the Advisory Committee through September 30, 1993, and the Advisory Committee was renewed by the Secretary of Agriculture on February 8, 1989, to provide advice to the Administrator of the Federal Grain Inspection Service (FGIS) with respect to the implementation of the Act.

The Advisory Committee presently consists of 15 members, appointed by the Secretary, representing the interests of producing, processing, storing, merchandising, consuming, and exporting industries, including expertise on research related to the policies in section 2 of the Act. Members of the Committee serve without compensation except that members, while away from their homes or regular places of business in the performance of service, are reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized under section 5703 of Title 5, United States Code.

In accordance with Public Law 100–518, five of the initial 15 members were appointed for terms of 1 year, five were appointed for 2 years, and five were appointed for 3 years. Also alternate members were appointed for the same terms. The appointments of the members serving 1-year terms expire during February 1990. Hereafter appointments will be for 3-year terms except for replacements for those who resign. (One member resigned who was initially given a 3-year appointment.)

Nominations are needed for persons to serve on the Advisory Committee to replace (1) the five members and five alternate members whose terms expire during February 1990 and (2) the unexpired term (2 years) of the member who resigned.

Persons interested in serving on the Advisory Committee or persons interested in nominating persons to serve should contact in writing: Administrator, FGIS, Room 1094–S, P.O. Box 96454, Washington, D.C. 20090–6454, and request a copy of Form AD–755, which must be completed and submitted to the Administrator at the above address not later than (60 days after publication).

Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, or marital status.

The final selection of committee members and alternates will be made by the Secretary.

Dated: December 1, 1989.

W. Kirk Miller,

Administrator.

[FR Doc. 89–28614 Filed 12–6–89; 8:45 am]

BILLIN CODE 3410–EN–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. OEE–1–89.02, OEE–1–89.03]

Franciscus Govaerts, Individually and Doing Business as Printlas Europa, Respondent; Order

On November 22, 1989, the Administrative Law Judge (ALJ) entered his Recommended Decision in the above-referenced matter. The Decision, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. Having examined the record and based on the facts in this case, I hereby affirm the Decision of the ALJ.

Respondent's request to vacate the Temporary Denial Order that was originally issued on April 6, 1989 (54 FR 14667) and renewed by the Assistant Secretary for Export Enforcement on October 4, 1989 (54 FR 41660) is denied. There is reason to believe that the Temporary Denial Order in this case is

required in the public interest to prevent an imminent violation of the Export Administration Act and the Export Administration Regulations.

This constitutes final agency action on this matter.

Dated: November 30, 1989.

Dennis Kloske,

Under Secretary for Export Administration.

Recommended Decision

Appearance for Respondent: Franciscus Govaerts, Printlas Europa, Torenakker 8–5731 CC, Mierlo, Holland.

Appearance for Agency: Anthony Hicks, Esq., Office of Chief Counsel for Export Administration, U.S. Department of Commerce, Room H–3837, 14th & Constitution Avenue NW., Washington, DC 20230.

Background

This is an appeal from the renewal of a Temporary Denial Order against Appellants dated October 4, 1989 (54 FR 41660, October 11, 1989). The original *ex parte* denial order was issued on April 6, 1989 (54 FR 14667). That Order denied U.S. Export Privileges to these and a number of other parties. It was issued by the Assistant Secretary for Export Enforcement pursuant to authority delegated under the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401–2420) and the implementing regulations 15 CFR parts 768–799.

A Petition to Vacate that order was filed on behalf of Appellants on November 8, 1989.

Issue

The principal issue for consideration in this appeal is whether the record contains an adequate basis to sustain the extraordinary temporary denial order.

Discussion

In this appeal Appellant Govaerts raises essentially the same objections asserted to the Assistant Secretary in the renewal process. That agency action, which was published in the Federal Register at 54 FR 41660, October 11, 1989, sets forth in some detail the background, violations, other parties and Mr. Govaert's claim that he was the victim of a scam by Customs agents who lured him into committing the acts which constitute the violations charged. His criminal conviction and sentence foreclose denial of the essential facts which form the basis for the action taken here. *Spawr Optical Research Inc.* v. *Baldrige*, 649 F.Supp 1366 (D.D.C. 1986). As was recently noted in the denial of the *Roger Van Alphen* Docket No. OEE 1–89.01 (FR) who is named in the order with the Appellant, the background and facts are clear. The indication that substantial amounts of money may still be available to this cabal, in particular, warrants continued concern.

Conclusion

The evidence submitted, and that summarized in the publication of the renewal temporary denial order cited above, reflect a reasonable possibility that Appellants, together with the three other individuals, engaged in efforts to export controlled equipment unlawfully from the United States to Bulgaria. This record further reflects that Appellants and these other individuals may have the means to continue such efforts.[1] The Appellants fail to overcome that showing. I conclude that there is reason to believe that the Temporary Denial Order is required in the public interest to prevent an imminent violation of the Act and the Regulations.

I therefore recommend that the appeal be *Denied*.

Dated: November 22, 1989.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 89–28547 Filed 12–6–89; 8:45 am]

BILLING CODE 3510–01–M

[Docket Nos. 9112–01, 9113–01]

Actions Affecting Export Privileges: Ji Wai Sun, Hua Ko Electronics Co., Ltd., Respondents

Summary

Pursuant to the two October 30, 1989 recommended Decisions and Orders of the Administrative Law Judge (ALJ), which are attached hereto and affirmed by me, Ji Wai Sun and Hua Ko Electronics Co., Ltd., and all successors, assignees, officers, partners, representatives, agents and employees are hereby denied for a period of fifteen years from the date hereof all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Export Administration Regulations (15 CFR parts 768–799). This action is further subject to the other conditions as enumerated in the recommended Orders of the ALJ.

Order

On October 30, 1989, the ALJ entered his recommended Decisions and Orders in the two above-referenced matters. The Decisions and Orders, copies of which are attached hereto and made a part hereof, have been referred to me for final action. Having examined the record and based on the facts in these cases, I hereby affirm the Decisions and Order of the ALJ.

This constitutes final agency action in these matters.

Dated: November 29, 1989.

Dennis E. Kloske,

Under Secretary for Export Administration.

Appearance for Respondent: Ji Wai Sun, 9 Dai Shun Street, Tai Po Industrial Estate, New Territories, Hong Kong.

Appearance for Agency: G. Roderick Gillette, Esq., Office of Chief Counsel for Export Administration, U.S. Department of Commerce, Room H–3837, 14th & Constitution Ave., NW., Washington, DC 20230.

Preliminary Statement

The Office of Export Enforcement (the "Agency"), Bureau of Export Administration, U.S. Department of Commerce issued a March 29, 1989 charging letter against Respondent Ji Wai Sun. The letter was issued under the authority of the Export Administration Act of 1979 (50 U.S.C.A. app. 2401–2420), as amended (the "Act"), and the Export Administration Regulations (the "Regulations"), promulgated pursuant to the Act.[1]

In the charging letter, the Agency listed fourteen 1983–84 export transactions from the United States to Hong Kong in which the Agency alleged that Respondent was involved. Various

[1] Though the record reflects a grievous criminal violation, it is devoid of a substantial showing respecting why this extraordinary remedy needs to be extended. Government Agents were present and observed the violations when they occurred through December 1988. The Appellant Govaerts entered a guilty plea to criminal charges in June 1989 and was sentenced on August 17, 1989. Others in the group were similarly identified and action initiated. On the face of the presentation there has been more than adequate opportunity to issue a charging letter. In these short turnaround appeals there is not time to address what may be valid concerns about the degree of culpability and appropriate sanction. The extensive compilation of materials presented here would appear to be more than sufficient to initiate the charging letter proceeding. It is noted that both in the initial and the renewal request Agency Counsel has indicated that the charging letter would be forthcoming. With Temporary Denial Orders remaining outstanding for in excess of seven years, this agency has a poor record on these matters. Congress' recent action in extending the time for such issuances and renewals will be jeopardized if they are not closely monitored. Agency Counsel should certainly make a clear showing of why charges have not been filed and when they will be.

[1] The Act was reauthorized and amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985), and amended by the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100–418, 102 Stat. 1107 (August 23, 1988).

The Regulations, formerly codified at 15 CFR parts 368–399, were redesignated as 15 CFR parts 768–799, effective October 1, 1988 (53 FR 37751, September 28, 1988).

of these transactions, according to the charging letter, violated §§ 787.3(a), 787.3(b), 787.5(a)(1)(ii), and 787.6 of the Regulations.

When Respondent failed to answer the charging letter, an order declared him to be in default; and that order directed the Agency to make the default submission prescribed by § 788.8 of the Regulations, which the Agency did. Respondent failed also to reply to a subsequent order to show cause why this matter should not be adjudicated on the basis of the Agency's default submission and of the order declaring him in default. To date, Respondent has made no submission in this proceeding.

Discussion

The Agency's default submission included evidence that its charging letter had been served on Respondent (Agency's July 18, 1989 Motion (hereinafter "Motion"), Exhibit 2). As noted, the charging letter alleged that Respondent violated the Regulations through his involvement in fourteen exports or attempted exports from the United States to Hong Kong that occurred from February 1983 to July 1984. The alleged violations were: Conspiracy (§ 787.3(b)); misrepresentation on export control documents (§ 787.5.(a)(1)(ii)); two attempted unauthorized exports (§ 787.3(a)); and an unauthorized export (§ 787.6). In its default submission, the Agency proposed a fifteen-year denial of U.S. export privileges as the appropriate sanction.

The Agency submitted a large amount of documentary evidence—106 exhibits—to make its case (Motion). In this same submission, the Agency withdrew its charge regarding the unauthorized export (*id.* 19) and one of the two attempted unauthorized exports (*id.*). The Agency in this submission withdrew also its charges concerning some of the fourteen listed export transactions (*id.* 16, 17, 19).

The thrust of the Agency's presentation was that Respondent worked with several other parties, located in the United States and Hong Kong, to arrange a series of exports to one of the parties, a Hong Kong firm. The subject matter of these exports was the commodities and technical data used in the production of semiconductor devices. The problem for the exports was that this Hong Kong firm was then regarded by the Commerce Department as an unacceptable end user for exports requiring a validated license, a fact known to Respondent and his alleged co-conspirators. Consequently, according to the Agency, they structured the exports so that the Hong Kong destination appeared to be a party other than this firm.

While the Agency advanced considerable detail regarding a number of the fourteen export transactions at issue, it pressed its case especially respecting a July 1984 attempted export (see, *e.g.*, Agency's July 18, 1989 Recommended Decision and Order 2–3). For this export, the Agency charged that Respondent and his co-conspirators made a material misrepresentation on the export license application (Motion Exhibits 102, 103), and that these commodities were controlled for national security reasons (Motion Exhibits 96–98). The Agency charged further that Respondent and his co-conspirators attempted an unauthorized export of these commodities (Motion Exhibits 104–106), and that the alleged conspiracy included the misrepresentation and the attempted export (Motion Exhibits 99–101).

The Agency did not state why it singled out this July 1984 export transaction for special attention among the fourteen alleged export transactions. The Agency's motive may have been that its withdrawal of several of the original fourteen export transactions (Motion 19) left this July 1984 transaction as the only one allegedly occurring within five years of the issuance of the March 1989 charging letter.

Conclusion

The Agency's presentation satisfactorily established a material misrepresentation on the export license application for the attempted July 1984 export (Motion Exhibits 102, 103), and a national security basis for the pertinent export licensing requirement (Motion Exhibits 96–98). The attempt to make the unauthorized export was also established (Motion Exhibits 104–106), as was Respondent's participation in a conspiracy that produced the misrepresentation and the attempt (*e.g.*, Motion Exhibits 99–101, 104, 106).

The Agency's presentation further demonstrated that the violations involved in this attempted July 1984 export repeated a pattern evident in other of the fourteen alleged previous export transactions. In sum, the conclusion follows that Respondent, in connection with this July 1984 export, violated § 787.3(a) of the Regulations (attempt), § 787.5(a)(1)(ii) (misrepresentaiton), and § 787.3(b) (conspiracy).

As a sanction, the Agency proposed a fifteen-year denial of Respondent's U.S. export privileges, stressing the deliberateness of the violations (Motion 21–22). The Agency's proposal is reasonable, and it shall be implemented in the Order set forth below.

As the Agency noted (Motion 3–4), Respondent is already subject to a ten-year denial period, in consequence of an Order based on another series of export transactions (53 FR 29352 (August 4, 1988)). That denial period began to run July 30, 1988, and the last five years were to be suspended, provided Respondent remained free of other violations. The fifteen-year denial period imposed by the instant Order will begin as soon as Agency action on this Order becomes final, and this Order contains no provision for suspension. Therefore these fifteen years will run concurrently with the remaining years of the earlier imposed ten-year denial, and these fifteen years will then continue until their full fifteen-year period has expired.

Order

I. For a period of fifteen years from the date of the final Agency action, Respondent: Ji Wai Sun, 9 Dai Shun Street, Tai Po Industrial Estate, New Territories, Hong Kong, and all successors, assignees, officers, partners, representatives, agents and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated or general export license application;

(ii) In preparing or filing any export license application or request for reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend to those commodities and technical data which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV. All outstanding individual validated export licenses in which Respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondent's privileges of participating, in any manner or capacity, in any special licensing procedures, including, but not limited to, distribution licenses, are hereby revoked.

V. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Respondent or any related person, or whereby Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(ii) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VI. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.A. app. 2412(c)(1)).

Dated: October 30, 1989.

Thomas W. Hoya,

Administrative Law Judge.

To be considered in the 30 day statutory review process which is mandated by section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW., Room 3898B, Washington, DC 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 388.23(b), 50 FR 53134 (1985). Pursuant to section 13(c)(3) of the Act, the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

Appearance for Respondent: Hua Ko Electronics Co., Ltd., 9 Dai shun Street, Tai Po Industrial Estate, New Territories, Hong Kong.

Appearance for Agency: G. Roderick Gillette, Esq., Office of Chief Counsel for Export Administration, U.S. Department of Commerce, Room H-3837, 14th and Constitution Avenue NW., Washington, DC 20230.

Preliminary Statement

On March 29, 1989 the Office of Export Enforcement (the "Agency"), Bureau of Export Administration, U.S. Department of Commerce issued a charging letter against Respondent Hua Ko Electronics Co., Ltd. This letter was issued under the authority of the Export Administration Act of 1979 (50 U.S.C.A. app. 2401–2420), as amended (the "Act"), and the Export Administration Regulations (the "Regulations"), promulgated pursuant to the Act.[1]

The charging letter listed fourteen 1983–84 export transactions from the United States to Hong Kong in which, it alleged, Respondent was involved. Various of these transactions, according to the charging letter, violated §§ 787.3(a), 787.3(b), 787.5(a)(1)(ii), and 787.6 of the Regulations.

Respondent failed to answer the charging letter. Consequently an order declared him to be in default, and directed the Agency to make the default submission prescribed by § 788.8 of the Regulations. The Agency made its default submission. A subsequent order directed Respondent to show cause why this matter should not be adjudicated on the basis of the Agency's default submission and of the order declaring Respondent in default. Respondent failed also to respond to that order and, to date, has made no submission in this proceeding.

[1] The Act was reauthorized and amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985), and amended by the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100–418, 102 Stat. 1107 (August 23, 1988).

The Regulations, formerly codified at 15 CFR parts 368–399, were redesignated as 15 CFR parts 768–799, effective October 1, 1988 (53 FR 37751, September 28, 1988).

Discussion

In its default submission, the Agency included evidence that its charging letter had been served on Respondent (Agency's July 18, 1989 Motion (hereinafter "Motion"), Exhibit 2). As noted, the charging letter alleged that Respondent violated the Regulations through its involvement in fourteen exports or atempted exports from the United States to Hong Kong that occurred from February 1983 to July 1984. The alleged violations were: conspiracy (§ 787.3(b)); misrepresentation on export control documents (§ 787.5.(a)(1)(ii)); two attempted unauthorized exports (§ 787.3(a)); and an unauthorized export (§ 787.6). In its default submission, the Agency proposed a fifteen-year denial of U.S. export privileges as the appropriate sanction.

The Agency's default submission comprised a substantial amount of documentary evidence—106 exhibits—to make its case (Motion). In this same submission, the Agency withdrew its charge regarding the unauthorized export (*id.* 19) and one of the two attempted unauthorized exports (*id.*). In this submission the Agency withdrew as well its charges concerning some of the fourteen listed export transactions (*id.* 16, 17, 19).

The Agency's thesis was that Respondent worked with several parties, located in the United States and Hong Kong, to obtain, through a series of exports from the United States, commodities and technical data used in the production of semiconductor devices. The problem in obtaining these exports was that Respondent was then regarded by the Commerce Department as an unacceptable end user for exports requiring a validated license, a fact known to Respondent and its alleged co-conspirators. Consequently, according to the Agency, they arranged the exports so that the Hong Kong destination appeared to be a party other than Respondent.

Although the Agency presented considerable detail regarding a number of the fourteen export transactions it alleged, it pursued its case especially respecting a July 1984 attempted export (see, *e.g.*, Agency's July 18, 1989 Recommended Decision and Order 2–3). The Agency charged that Respondent and its co-conspirators made a material misrepresentation on the export license application for this export (Motion Exhibits 102, 103), and that these commodities were controlled for national security reasons (Motion Exhibits 96–98). The Agency charged

further that Respondent and its co-conspirators attempted to export these commodities without proper authorization (Motion Exhibits 104–106), and that the alleged conspiracy existed regarding the misrepresentation and the attempted export (Motion Exhibits 99–101).

The Agency did not explain its emphasis on this particular July 1984 attempted export as against all others of the fourteen alleged export transactions. But the Agency's rationales may have been that, after the Agency withdrew several of the original fourteen export transactions (Motion 19), this July 1984 transaction remained as the only one allegedly occurring within five years prior to issuance of the March 1989 charging letter.

Conclusion

The Agency sufficiently documented its charge of a material misrepresentation on the export license application for the attempted July 1984 export (Motion Exhibits 102, 103), and of the national security basis for the licensing requirements for the commodities at issue (Motion Exhibits 96–98). The Agency's documentation also established satisfactorily its charge that an export lacking proper authorization was attempted of the commodities described in this application (Motion Exhibits 104–106). Finally, the Agency's presentation proved that Respondent participated in a conspiracy that produced the misrepresentation and the attempt (*e.g.*, Motion Exhibits 99–101, 104, 106).

The Agency's documentation demonstrated further that the violations involved in this attempted July 1984 export repeated a pattern evident in other of the fourteen alleged previous export transactions. In total, the evidence of record compels the conclusion that Respondent, in connection with this July 1984 export, violated § 787.3(a) of the Regulations (attempt), § 787.5(a)(1)(ii) (misrepresentation), and § 787.3(b) (conspiracy).

For a sanction, the Agency based its proposed fifteen-year denial of Respondent's U.S. export privileges on the deliberateness of the violations (Motion 21–22). The Agency has justified its proposed sanction, and it shall be implemented in the Order set forth below.

As the Agency noted (Motion 3–4), Respondent is already subject to a ten-year denial period, in consequence of an Order based on another series of export transactions (53 FR 29352 (August 4, 1988)). That denial period began to run July 30, 1988, and the last five years were to be suspended, provided Respondent remained free of other violations. The fifteen-year denial period imposed by the instant Order will begin as soon as Agency action on this Order becomes final, and this Order contains no provision for suspension. Therefore these fifteen years will run concurrently with the remaining years of the earlier imposed ten-year denial, and these fifteen years will then continue until their full fifteen-year period has expired.

Order

I. For a period of fifteen years from the date of the final Agency action, Respondent Hua Ko Electronics Co., Ltd., 9 Dai Shun Street, Tai Po Industrial Estate, New Territories, Hong Kong, and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated or general export license application;

(ii) In preparing or filing any export license application or request for reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to those commodities and technical data which are subject ot the Act and the Regulations.

III. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV. All outstanding individual validated export licenses in which Respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondent's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

V. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Respondent or any related person, or whereby Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or the export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(ii) Order, buy, receive, use, sell, deliver, store, dispose or, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VI. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.A. app. 2412(c)(1)).

Dated: October 30, 1989.

Thomas W. Hoya,

Administrative Law Judge.

To be considered in the 30 day statutory review process which is mandated by section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW., Room 3898B, Washington, DC 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 388.23(b), 50 FR 53134 (1985). Pursuant to section 13(c)(3) of the Act, the final

order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

[FR Doc. 89-28540 Filed 12-6-89; 8:45 am]
BILLING CODE 3510-DT-M

International Trade Administration

[A-201-801]

Postponement of Final Antidumping Duty Determination; Certain Steel Pails From Mexico

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have permitted a request from the respondent in the antidumping duty investigation to postpone the final determination, as permitted by section 735(a)(2)(A) of the Tariff Act of 1930, as amended.

Based on this request, we are postponing our final determination as to whether sales of certain steel pails from Mexico have occurred at less than fair value until not later than March 23, 1990.

EFFECTIVE DATE: December 7, 1989.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger at (202) 377-4136 or Bradford Ward at (202) 377-5288, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On November 15, 1989, we published a preliminary determination of sales at less than fair value of this merchandise. That notice stated that if the investigation proceeded normally, we would make our final determination by January 22, 1990.

On November 27, 1989, Envases de Plastico, S.A. de C.V., a respondent which accounts for virtually all exports of the subject merchandise to the United States, requested a postponement of the final determination in the antidumping duty investigation for an additional sixty days, pursuant to section 735(a)(2)(A) of the Act. Pursuant to 19 CFR 353.20(b)(1), if exporters who account for a significant proportion of exports of the subject merchandise under investigation request a postponement of the final determination following an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Consequently, we are postponing our final determination in this investigation until not later than March 23, 1990.

Public Comment: As the Department did not receive any requests for a hearing within ten days of publication of our preliminary determination, as provided for in § 353.38(b) of the Department's regulations, no hearing will be held in this investigation. Interested parties who wish to comment on the preliminary determination in the antidumping duty investigation may submit case briefs and rebuttal briefs, in accordance with § 353.38 of the Department's regulations.

Ten copies of the business proprietary version and five copies of the public version of case briefs must be submitted to the Assistant Secretary by February 7, 1990. Ten copies of the business proprietary version and five copies of the public version of rebuttal briefs must be submitted to the Assistant Secretary by February 14, 1990. Written arguments will be considered only if received within the time limits specified in this notice.

The U.S. International Trade Commission is being advised of this postponement in accordance with section 735(d) of the Act. This notice is published pursuant to section 735(d) of the Act.

Dated: November 30, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-28548 Filed 12-6-89; 8:45 am]
BILLING CODE 3510-DS-M

[C-201-006]

Polypropylene Film From Mexico Intent To Terminate Suspended Investigation

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to terminate suspended investigation.

SUMMARY: The Department of Commerce is notifying the public of its intent to terminate the suspended countervailing duty investigation on polypropylene film from Mexico. Interested parties who object to this termination must submit their comments in writing not later than December 31, 1989.

EFFECTIVE DATE: December 7, 1989.

FOR FURTHER INFORMATION CONTACT: Millie Mack or Barbara Willams, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3793.

SUPPLEMENTARY INFORMATION:

Background

On December 7, 1982, the Department of Commerce ("the Department") published an agreement suspending the countervailing duty investigation on polypropylene film from Mexico (47 FR 54772).

The Department has not received a request to conduct an administrative review of the agreement suspending the countervailing duty investigation on polypropylene film from Mexico for more than four consecutive annual anniversary months.

The Department may terminate a suspended investigation if the Secretary of Commerce concludes that a suspension agreement is no longer of interest to interested parties. Accordingly, as required by 19 CFR 355.25, the Department is notifying the public of its intent to terminate this suspended investigation.

Opportunity to Object

Not later than December 31, 1989, interested parties, as defined in § 355.2(i) of the Department's regulations, may object to the Department's intent to terminate this suspended investigation.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review or object to the Department's intent to terminate by December 31, 1989, we shall conclude that the suspended investigation is no longer of interest to interested parties and shall proceed with the termination.

This notice is in accordance with § 355.25(d) of the Department's regulations.

Dated: December 4, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-28683 Filed 12-6-89; 8:45 am]
BILLING CODE 3510-05-M

National Technical Information Service

Prospective Grant of Exclusive Patent License

This is notice in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of

an exclusive license in the United States to practice the invention embodied in U.S. Patent Number 4,541,231, "Process for Reinforced Yarn with Glass Fiber Core", to Firesafe Products Corporation, having a place of business at 276 Fifth Avenue, New York, New York. The invention involves a process for producing a yarn with glass fiber cores and a staple fiber sheath that is relatively torque-free and balanced in the plied state and can be woven without slashing. The patent rights in this invention have been assigned to the United States of America.

The contemplated license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The contemplated license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

A copy of the instant patent may be purchased from the U.S. Patent and Trademark Office.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Douglas J. Campion, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 89-28622 Filed 12-6-89; 8:45 am]

BILLING CODE 3510-04-M

COMMODITY FUTURES TRADING COMMISSION

New York Mercantile Exchange Proposed Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The New York Mercantile Exchange ("NYMEX" or "Exchange") has applied for designattion as a futures contract market in natural gas. The Director of the Division of Economic Analysis ("Division") of the Commission, acting pursuant to the authority delegated by Commission Regulation § 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before January 8, 1990.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the NYMEX natural gas futures contract.

FOR FURTHER INFORMATION CONTACT: Joseph Storer or Richard Shilts, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, (202) 254-7303.

SUPPLEMENTARY INFORMATION: The NYMEX originally applied for designation as a futures contract market in natural gas in March 1984, and that original proposal was published in the **Federal Register** on April 18, 1984 (49 FR 15255). In view of the substantive changes to the original application with the NYMEX's November 10, 1989, resubmission of the proposal and the major changes in the natural gas cash market since 1984, the Director of the Division believes that an additional opportunity for public comment on the proposed natural gas futures designation application is warranted.

Copies of the terms and conditions of the proposed contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the NYMEX in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the NYMEX in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC on November 30, 1989.

Steven Manaster,

Director, Division of Economic Analysis.

[FR Doc. 89-28530 Filed 12-6-89; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Manual for Courts-Martial

ACTION: Notice of Proposed Admendments.

SUMMARY: The Department of Defense is considering recommending changes to the Manual for Courts-Martial, United States, 1984, Executive Order No. 12473, as amended by Executive Order Nos. 12484, 12550, and 12586. The proposed changes are part of the annual review required by the Manual for Courts-Martial and DoD Directive 5500.17, "Review of the Manual for Courts-Martial," January 23, 1985.

The proposed changes reflected in this notice would amend the following Rules for Courts-Martial: R.C.M. 701, Discovery—Disclosure by the Defense; R.C. M. 705, Pretrial Agreements—Procedure; R.C.M. 707, Speedy Trial; R.C.M. 908(b), Appeals by the United States—Pretrial Confinement of Accused Pending Appeal; R.C.M. 1113(a), Execution of Sentence—Confinement. The proposed changes would also amend section VII, part III (Military Rules of Evidence) by adding the following new rule: M.R.E. 707—Polygraph Examinations. The proposed changes would also amend the following Paragraphs, part IV (Punitive Articles): Para. 4e—Article 80 (Attempts)—Maximum Punishment; Para. 35c—Article 111 (Drunk or Reckless Driving)—Elements; Para 57d—Article 131 (Perjury)—Lesser Included Offenses; and Para. 96f—Article 134 (Obstructing Justice)—Sample Specification.

The proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, "Preparation and Processing of Legislation, Executive Orders, Proclamations, and Reports and Comments Theron," May 21, 1964, and do not constitute the official position of the Department of Defense, the Military Departments, or any other government agency.

This notice is provided in accordance with DoD Directive 5500.17, "Review of the Manual for Courts-Martial," January 23, 1985. This notice is intended only to improve the internal management of the federal government. It is not intended to

create any right or benefit, substantive or procedural, enforceable a law by a party against the United States, its agencies, its officers, or any person.

ADDRESS: Copies of the proposed changes, and the accompanying Discussion and Analysis, may be examined at the Office of The Judge Advocate General (DAJA–CL), Department of the Army, Pentagon (Room 2D434), Washington, DC 20310–2213. A copy of the proposed changes and accompanying Discussion and Analysis may be obtained by mail upon request from the foregoing address, ATT: Major Thomas O. Mason.

DATE: Comments on the proposed changes must be received not later than February 20, 1990 for consideration by the Joint-Service Committee on Military Justice.

FOR FURTHER INFORMATION CONTACT: Major Thoams O. Mason, (202) 695–2193.

Dated: December 1, 1989.

L. M. Bynum,

Alternate OSD Federal Register Liaision Officer Department of Defense.

[FR Doc. 89–28544 Filed 12–6–89; 8:45 am]

BILLING CODE 3810-01-M

Performance Review Board; Membership Appointments

AGENCY: Defense Mobilization Systems Planning Activity, DoD.

ACTION: Announce Membership of Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) of the Defense Mobilization Systems Planning Activity (DMSPA). the publication of the PRB membership is required by 5 U.S.C. 43149(c)(4).

The Performance Review Board provides fair and impartial review of Senior Executive performance appraisals and makes recommendations regarding performance and performance awards to the Director.

DATE: December 7, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick J. Garrett, Resource Management and Support Services, Defense Mobilization Systems Planning Activity, c/o OASD(FM&P), Correspondence and Control Division, The Pentagon, Room 3E759, Washington, DC, telephone (703) 756–7916.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following register constitutes members of the Defense Mobilization Systems Planning Activity PRB who will serve one-year renewable terms effective November 29, 1989.

Mr. George Hoffman
Mr. Bruce J. Campbell
Dr. Michael L. Ioffredo
Mr. E. William Harding
Mr. Thomas M. Stanners

Dated: December 1, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 89–28545 Filed 12–6–89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Acceptance of Group Application Under Public Law 95–202 and DODD 1000.20; Civilian Sailors Who Served on Service Ships Under Contract to the U.S. Navy in World War II During the Period July 1, 1944 Through December 31, 1945

Under the provisions of section 401, Public Law 95–202 and DOD Directive 1000.20, the Department of Defense Civilian/Military Service Review Board has accepted an application on behalf of the group known as: "Civilian Sailors Who Served on Service Ships Under Contract to the U.S. Navy in World War II During the Period July 1, 1944 Through December 21, 1945." Persons with information or documentation pertinent to the determination of whether the service of this group is to be considered equivalent to active military service to the Armed Forces of the United States are encouraged to submit such information or documentation within 60 days to the DOD Civilian/Military Service Review Board, Secretary of the Air Force (SAF/MRC), Washington, DC 20330–1000. Copies of documents or other materials submitted cannot be returned. For further information, contact Lt Col Harris, (202) 692–4747.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89–28575 Filed 12–6–89; 8:45 am]

BILLING CODE 3910-01-M

Department of Army

Environmental Statement on Proposed Land Acquisition at Yakima Firing Center, WA; Extension of Public Comment Period

AGENCY: Department of the Army, DOD.

SUMMARY: The U.S. Army published a Draft Supplemental Environmental Impact Statement on the proposed land acquisition at the Yakima Firing Center in Kittitas County, Washington. The formal public comment period ended on 13 November 1989. The Army has received requests to extend the public comment period. Based on those requests, the Army has decided to extend the public comment period until 27 December 1989. Written comments should be forwarded to: Commander, Headquarters, I Corps & Fort Lewis, Attention: AFZH–DEQ (Mr. Stedman), Fort Lewis, Washington 98433–5000.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA (IL&E).

[FR Doc. 89–28588 Filed 12–6–89; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

Energy Conservation Program for Consumer Products; Application for Interim Waiver and Petition for Waiver of Furnace Test Procedures From Lennox Industries (F–018)

AGENCY: Conservation and Renewable Energy Office, Department of Energy.

SUMMARY: Today's notice publishes a letter granting an Application for an Interim Waiver from Lennox Industries' (Lennox) requesting relief from the existing Department of Energy (DOE) test procedures for furnaces regarding (a) blower time delay and (b) the determination of the off-cycle draft factor (Df) for Lennox's G20 and G20R series atmospheric furnaces.

Today's notice also publishes a "Petition for Waiver" from Lennox. The company's Petition for Waiver requests DOE to grant relief from the DOE test procedures relating to the blower time delay specification and in the determination of Df. Lennox seeks to test using a blower delay time of 45 seconds instead of the specified 1.5 minute delay between burner on-time and blower on-time and determining Df by tracer gas test measurements instead of the specified value of 1.0 for atmospheric burners. DOE is soliciting comments, data and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data and information not later than January 8, 1990.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. F–018, Mail Stop CE–132, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:
Carl E. Adams, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail station CE-132, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9127
Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-12, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9507.

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Pub. L. 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Pub. L. 95-619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA) Public Law 100-357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces.

The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

DOE has amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. DOE further amended the Department's appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an interim waiver from test procedure requirements to manufacturers. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of a waiver.

The interim waiver provisions, added by the 1986 amendment, allow the Assistant Secretary to grant an interim waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determined that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver.

On August 1, 1989, Lennox filed an Application for Interim Waiver regarding (a) blower time delay and (b) the determination of Df. The first part of Lennox's application seeks an interim waiver from the DOE test provisions that require a 1.5 minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Lennox requests the allowance to test using a 45 second blower time delay when testing its G20 and G20R series atmospheric furnaces. Lennox states that the 45 second delay is indicative of how these furnaces actually operate. Such a delay results in an energy savings of approximately 0.7 percent. Since current DOE test procedures do not address this variable blower time delay, Lennox asks that the interim waiver be granted.

Previous waivers for this type of timed blower delay control have been granted by the Department to the Coleman Company, 50 FR 2710, January 18, 1985, the Magic Chef Company, 50 FR 41553, October 11, 1985, the Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, and the Trane Company, 54 FR 19226, May 4, 1989. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

The second part of Lennox's application seeks an interim waiver from the DOE test procedure that requires the use of a 1.0 value for Df for an atmospheric furnace. The application states that the G20 and G20R series of atmospheric furnaces will incorporate an electromechanical burner box damper system that greatly restricts the flow through the heat exchanger when the damper is closed during the off-cycle. Lennox claims the restriction of the damper is similar to the restriction of flow caused by a power burner during the off-cycle. Thus, it should be given a similar Df value as allowed for power burners.

Lennox states that the current test method does not give credit for the energy savings due to the reduced flow and, as a result, provides materially inaccurate comparative data. To be able to take credit for the energy savings resulting from the reduced flow, Lennox requests a waiver from the furnace test procedure to allow Df to be determined by tracer gas test measurements and to use the calculations set forth in the test procedures for power burners. When tested using the tracer gas method for determination of Df, which is allowed in the test procedure for power burners, Lennox claims the G20 furnace indicates an Annual Fuel Utilization Efficiency (AFUE) which averages at least 4.0 percent higher than is indicated when tested under the current method of test for atmospheric furnaces using the specified value of 1.0 for Df.

For the purpose of reducing off-cycle losses, there should be no difference between restricting the air flow through the heat exchanger by stopping the combustion air blower in a power burner and restricting the air flow by some sort of electromechanically operated damper. It appears likely that the Petition for Waiver will be granted for the determination of Df.

Because Lennox's Petition for Waiver requesting relief from the DOE test procedures concerning blower time delay and the determination of Df appear likely to be granted, the company's Application for Interim Waiver on these subjects is granted.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waivers" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

In addition, pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations, the following letter granting the Application for Interim Waiver was issued to Lennox Industries.

Issued in Washington, DC, November 30, 1989.

Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

November 30, 1989.

Mr. Hal H. Rhea,

Vice President Research and Development, Lennox Industries, Inc., P.O. Box 877, Carrollton, Texas 75006

Dear Mr. Rhea: This is in response to your August 1, 1989, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedures for furnaces when testing the company's G20 and G20R series gas-fueled forced-air atmospheric furnaces regarding (a) blower time delay, and (b) the determination of off-cycle draft factor (Df).

Previous waivers for timed blower delay control have been granted to the Coleman Company, 50 F.R. 2710, January 18, 1985, Magic Chef Company, 50 F.R. 41553, October 11, 1985, Rheem Manufacturing Company, 53 F.R. 48574, December 1, 1988, and the Trane Company, 54 F.R. 19226, May 4, 1989. It

appears likely that Lennox's Petition for Waiver will be granted.

For the purpose of reducing the off-cycle losses calculated by using Df, there should be no difference between restricting the air flow through the heat exchanger by stopping the combustion air blower in a power burner and restricting the air flow by some sort of electro-mechanically operated damper. It appears likely that Lennox's Petition for Waiver concerning the determination of the off-cycle draft factor, Df, will be granted.

Thus, Lennox's Application for an Interim Waiver concerning blower time delay and the determination of the value of Df is granted for the reasons stated above.

Lennox shall be permitted to test its G20 and G20R series of atmospheric furnaces on the basis of the test procedures specified in 10 CFR Part 430, with the modification set forth below.

(i) Section 9.3.1 of ANSI/ASHRAE Standard 103–1982 is deleted and replaced with the following paragraph:

Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower, or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe with ±0.01 inch of water gauge of the manufacturer's recommended on-period draft.

(ii) Sections 8.9.2 and 8.9.2.1 of ANSI/ASHRAE Standard 103–1982 to be deleted and replaced with the following:

8.9.2 Optional Methods for Determining Draft Factors Dp, Df, and Ds for Systems equipped with Power Burners or Draft Inducers or Atmospheric Systems with an Electro-Mechanical Device that Restricts the Flow Through the Heat Exchanger in the Off-Cycle. Draft Factors Dp, Df, and Ds are to be determined as described in 9.4. The tracer gas chosen for this task should have a density which is less than or approximately equal to the density of air. Use a gas that is of a different chemical species or different concentration from the flue gas to be measured and unreactive with the environment to be encountered.

8.9.2.1 On power burner or induced draft systems not employing automatic stack dampers or systems with a stack damper and a draft diverter or draft hood or atmospheric systems with an electro-mechanical device that restricts the flow through the heat exchanger in the off-cycle, determine Df (the ratio of gas mass flow rate through the flue during the off-cycle to the gas mass flow rate through the flue during the on-cycle at identical temperatures) during the cool-down test described in 9.2.

(iii) The title of Section 9.4 of ANSI/ASHRAE Standard 103–1982 to be deleted and replaced with the following title:

9.4 Optional Test Procedures for Determining Draft Factors for Dp, Df, and Ds for Systems Equipped with Power Burners or Induced Draft Fans or for Atmospheric Systems with an Electro-Mechanical Device that Restricts the Flow Through the Heat Exchanger in the Off-Cycle.

(iv) Tables 6 and 7 of ANSI/ASHRAE Standard 103–1982 to be deleted and replaced with the following tables:

TABLE 6.—INDOOR DRAFT FACTORS, FACTORS DESCRIBING AIR FLOW RATE FOR GAS AND OIL-FIRED NON-CONDENSING FURNACES OR BOILERS UTILIZING INDOOR AIR FOR COMBUSTION AND DRAFT CONTROL

Type of burner	Units without a stack damper but with draft hood or draft diverter			Barometric draft control			
System No.	S/F	Df	Ds	System No.	S/F	Df	Ds
Atmospheric	1	2.4	1.0	1.0	3	1.4	1.0	1.0
Power*	2° +	2.4	0.4	1.0	4	1.4	0.4	0.85

Units With a Stack Damper and							
Draft hood or draft diverter				Barometric draft control			
System No.	S/F	Df	Ds	System No.	S/F	Df	Ds
5	2.4	1.0	Do	7	1.4	1.0	Do
6	2.4	0.4	Do	8	1.4	0.4	(Do)(D_p')

where

$$D'_p = \frac{0.4+(0.4)\,(Do))(Do-1/(S/F),}{Do(1-1/(S/F))} \text{ if } Do>1/(S/F)$$

0.4, if $Do<1/(S/F)$

*Ds = Df = 0.4

S/F = 1

*See 11.4 second paragraph for direct exhaust units employing forced or induced draft, or power burners that utilize indoor air and have no draft control device.

*A power burner may incorporate a device on its air inlet which opens when the applicance is in operation and closes the air inlet when the appliance is in the standby condition.

+An atmospheric furnace with an electro-mechanical device that restricts the flow through the heat exchanger in the off-cycle may be tested as a system 2 with Df = 1.0 or as determined by the optional test procedure described in section 9.4.

TABLE 7.—INDOOR DRAFT FACTORS, OUTDOOR DRAFT FACTORS, FACTORS DESCRIBING AIR FLOW RATE FOR GAS OR OIL-FIRED FURNACES/BOILERS INTENDED FOR INSTALLATION OUT-OF-DOORS; IN UNHEATED SPACES (SUCH AS AN ATTIC OR CRAWL SPACE); OR INTENDED FOR INDOOR INSTALLATION BUT EQUIPPED WITH A DIRECT VENT SYSTEM AND ALL CONDENSING FURNACES OR BOILERS

Type of Burner	Units without a stack or flue damper		
	System No.	Df	
Atmospheric.	9	1.00	
Power*	10+	0.40	

Units with a flue damper		Type of draft	S/F
System No.			
11	Df	None	1
	Do	Barometric Damper.	1.4
12	0.4×Do	Draft Diverter.	2.4

*Also includes forced and induced draft equipment.

+An atmospheric furnace with an electro-mechanical device that restricts the flow through the heat exchanger in the off-cycle may be tested as a system 10 with Df = 1.0 or as determined by the optional test procedure described in section 9.4.

This interim waiver is based upon the presumed validity of statements and all allegations submitted by the company. This interim waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The interim waiver shall remain in effect until the Department of Energy issues a determination on Lennox's Petition for Waiver.

Sincerely,

J. Michael Davis, P.E.

Assistant Secretary, Conservation and Renewable Energy.

August 1, 1989.

Assistant Secretary, Conservation and Renewable Energy, United States Department of Energy

1000 Independence Avenue SW., Washington, DC 20585

Dear Sir: This is a petition for waiver submitted pursuant to Title 10 CFR Part 430.27. Waiver is requested from the uniform test method for measuring energy consumption of furnaces. In the interest of saving energy, Lennox Industries Inc. has developed a series of atmopspheric G20 and G20R furnaces which will utilize a 45 second fixed time delay blower relay. Waiver is requested from the 1.5 minute time delay requirement between the burner ignition and indoor blower activation in the heat-up portion of the test as outlined in Appendix N to Subpart B of Part 430 (Section 9.3.1 of ANSI/ASHRAE 103–82). We have found that under the current method of test the flue gas temperature as measured in the stack reaches a value which is higher than will be seen in actual operation resulting in inaccurate comparative data. Our test data indicates that an energy savings of approximately 0.7% on the AFUE is achievable with this reduction in blower delay. Previous waivers for this type of timed blower delay control have been granted to the Coleman Company (50 FR 2710, January 18, 1985), Magic Chef Company (50 FR 41533, October 11, 1985), and Rheem Manufacturing Company (53 FR 48574, December 1, 1988).

We are requesting that Lennox Industries Inc. be permitted to test its G20 series and G20R series of furnaces on the basis of the test procedures specified in 10 CFR part 430 with the following modification:

Section 9.3.1 of ANSI/ASHRAE Standard 103–82 to be deleted and replaced with the following paragraph:

Gas—and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t−), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together, (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower, or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t−), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 in. of water gauge of the manufacturer's recommended on-period draft.

The G20 and G20R series of atmospheric furnaces will also incorporate an electro-mechanical burner box damper system that greatly restricts the flow through the heat exchanger when the damper is closed during the off-cycle. This is similar to the restriction of flow caused by a power burner during the off-cycle. Because the damper is electro-mechanically operated, opening and closing times are of the same order as times required to bring a combustion air blower up to speed/prove air flow (10 sec) and for the blower impeller to slow down after power is removed (3 sec). The current test method does not give Lennox credit for the energy savings due to the reduced flow and as a result provides materially inaccurate comparative data. To be able to take credit for the energy savings resulting from the reduced flow, Lennox Industries Inc. requests a waiver from the furnace test procedure as described in Appendix N to Subpart B of Part 430 to allow the off-cycle draft factor Df to be determined by tracer gas test measurements and calculations similar to a method that can be employed on power burners. Under the current test procedure as specified in Appendix N to Subpart B of Part 430 (Section 8.9.1 and Draft Factor Tables 6 and 7 of ANSI/ASHRAE 103–82) the draft factor Df is set to a default value of 1.00 for an atmospheric furnace. When tested by tracer gas measurement as is specified for power burners in Section 9.4 of ANSI/ASHRAE 103–82, the draft factor Df was found to be in the range of .20 to .30 resulting in a greatly reduced energy loss. Lennox requests that the draft factor Df be calculated as for a power burner as is specified in ANSI/ASHRAE 103–1982. In this way, the actual flow during the off cycle and the resultant energy loss would be determined by test measurement rather than by the assumed draft factor specified in the procedure.

When tested using the tracer gas method for determination of draft factor Df as described above, the G20 furnace indicates an Annual Fuel Utilization Efficiency (AFUE) which averages at least 4.0% higher than is indicated when tested under the current method of test for atmospheric furnaces using the default value of 1.00 for Df. We feel that the homeowner should be allowed to take advantage of the energy savings which this efficiency increase represents.

We are requesting that Lennox Industries Inc. be permitted to test its G20 series and G20R series of furnaces on the basis of the test procedures specified in 10 CFR part 430 with the following modifications:

(1) Sections 8.9.2 and 8.9.2.1 of ANSI/ASHRAE Standard 103–1982 to be deleted and replaced with the following:

8.9.2 Optional Methods for Determining Draft Factors Dp, Df, and Ds for systems equipped with Power Burners or Draft Inducers or Atmospheric Systems with an Electro-Mechanical Device that Restricts the Flow Through the Heat Exchanger in the Off-Cycle. The tracer gas chosen for this task should have a density which is less than or approximately equal to the density of air. Use a gas that is of a different chemical species or different concentration from the flue gas to be measured and unreactive with the environment to be encountered.

8.9.2.1 On power burner or induced draft systems not employing automatic stack dampers or systems with a stack damper and a draft diverter or draft hood or atmospheric systems with an electro-mechanical device that restricts the flow through the heat exchanger in the off-cycle determine Df (the ratio of gas mass flow rate through the flue during the on-cycle at identical temperatures) during the cool-down test described in 9.2.

(2) The following section to be added to ANSI/ASHRAE Standard 103–1982:

8.9.2.3 Optional Methods for determining Draft Factors Dp, Df, and Ds on atmospheric systems with an electro-mechanical device that restricts the flow through the heat exchanger in the off-cycle. Draft factors to be determined as is described in 9.4.

(3) The title of Section 9.4 of ANSI/ASHRAE Standard 103–1982 to be deleted and replaced with the following paragraph:

9.4 Optional Test Procedures for Determining Draft Factors for Dp, Df, and Ds for Systems Equipped with Power Burners of Induced Draft Fans or for Atmospheric Systems with an Electro-Mechanical Device that Restricts the Flow Through the Heat Exchanger in the Off-Cycle.

4) Tables 6 and 7 of ANSI/ASHRAE Standard 103–1982 to be deleted and replaced with the following tables:

TABLE 6.—INDOOR DRAFT FACTORS, FACTORS DESCRIBING AIR FLOW RATE FOR GAS AND OIL-FIRED NON-CONDENSING FURNACES OR BOILERS UTILIZING INDOOR AIR FOR COMBUSTION AND DRAFT CONTROL

Type of burner	Units without a stack damper but with draft hood or draft diverter			Barometric draft control			
System No.	S/F	Df	Ds	System No.	S/F	Df	Ds
Atmospheric	1	2.4	1.0	1.0	3	1.4	1.0	1.0
Power*	2*+	2.4	0.4	1.0	4	1.4	0.4	0.85

Units with a stack damper and							
Draft hood or draft diverter				Barometric draft control			
System No.	S/F	Df	Ds	System No.	S/F	Df	Ds
5	2.4	1.0	Do	7	1.4	1.0	Do
6	2.4	0.4	Do	8	1.4	0.4	(Do)(Dp')

where

0.4, if $Do < 1/(S/F)$

$$Dp' = \frac{0.4 + (0.85 - (0.4)(Do))(Do - 1/(S/F))}{Do91 - 1/(S/F))}, \text{ if } Do > 1/(S/F)$$

*Ds = Df = -0.4

S/F = 1

*See 11.4 second paragraph for direct exhause units employing forced or induced draft, or power burners that utilize indoor air and have no draft control device.

*A power burner may incorporate a device on its air inlet which opens when the appliance is in operation and closes the air inlet when the appliance is in the standby condition.

+An atmospheric furnace with an electro-mechanical device that restricts the flow through the heat exchanger in the off-cycle may be tested as a system 2 with Df = 1.0 or as determined by optional test procedure.

TABLE 7.—OUTDOOR DRAFT FACTORS, FACTORS DESCRIBING AIR FLOW RATE FOR GAS OR OIL-FIRED FURNACES/BOILERS INTENDED FOR INSTALLATION OUT-OF-DOORS; IN UNHEATED SPACES (SUCH AS AN ATTIC OR CRAWL SPACE); OR INTENDED FOR INDOOR INSTALLATION BUT EQUIPPED WITH A DIRECT VENT SYSTEM AND ALL CONDENSING FURNACES OR BOILERS

Type of burner	Units without a stack or flue damper		
	System No.	Df	
Atmospheric	9	1.00	
Power*	10+	0.40	
Units with a flue damper		Type of draft	S/F
System No.			
11	Df	None	1
	Do	Barometric Damper.	1.4

TABLE 7.—OUTDOOR DRAFT FACTORS, FACTORS DESCRIBING AIR FLOW RATE FOR GAS OR OIL-FIRED FURNACES/BOILERS INTENDED FOR INSTALLATION OUT-OF-DOORS; IN UNHEATED SPACES (SUCH AS AN ATTIC OR CRAWL SPACE); OR INTENDED FOR INDOOR INSTALLATION BUT EQUIPPED WITH A DIRECT VENT SYSTEM AND ALL CONDENSING FURNACES OR BOILERS—Continued

Type of burner	Units without a stack or flue damper		
	System No.	Df	
12	0.40 x Do	Draft Diverter.	2.4

*Also includes forced and induced draft equipment.

+An atmospheric furnace with an electro-mechanical device that restricts the flow through the heat exchanger in the off-cycle may be tested as a system 10 with Df = 1.0 or as determined by optional test procedure.

At the initial meeting of ASHRAE SPC 103–1988 on June 28, 1989, it was recommended that the 103 standard be revised to allow tracer gas to be used on atmosphere furnaces as an optional method for determining draft factors. There were no objections, and a subcommittee is being formed to review the recommendation. We suggest that the SPC 103–1988 committee accept our proposed revisions and propose that DOE adopt the revised standard as the basis for the DOE test procedure.

Sincerely, Lennox Industries Inc.

Hal H. Rhea,

Vice President, Research and Development.

[FR Doc. 89–28612 Filed 12–6–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. RP89–161–004]

ANR Pipeline Co.; Proposed Changes in Gas Tariff Pursuant to Amendment To Motion To Place Tariff Sheets Into Effect on November 1, 1989

November 30, 1989.

Take notice that on November 22, 1989, ANR Pipeline Company (ANR) tendered for filing certain revised tariff sheets to be effective November 1, 1989. Such tariff sheets replace certain of the tariff sheets which were filed by ANR on October 31, 1989 with its "Motion to Place Substitute Tariff Sheets Into Effect on November 1, 1989", and adds other tariff sheets.

ANR states that this filing was made necessary by, and is in compliance with, the Commission's Order of October 31, 1989 herein (Order Granting In Part and Denying In Part Rehearing and Granting Clarification), which Order made it necessary to amend the tariff sheets filed with ANR's October 31, 1989 Motion, so as to change certain aspects of ANR's design of rates, with resultant change of rate levels, and of ANR's tariff terms.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure. All such protests should be filed on or before December 7, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–28602 Filed 12–6–89; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–62084; FRL–3685–4]

Availability of Applications for the 1990 Award Cycle of the Asbestos School Hazard Abatement Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the availability of applications for the 1990 award cycle of the Asbestos School Hazard Abatement Act (ASHAA) of 1984 program. The program was established to offer financial assistance to financially needy schools so that they may abate asbestos materials which pose a serious health hazard to building occupants. Assistance is offered in the form of loans and/or grants and is available for public and non-profit private elementary and secondary schools.

DATES: All complete applications must be submitted by Local Education Agencies (LEAs) to State ASHAA Designees by January 22, 1990, and by the States to EPA by February 2, 1990, to be considered for FY 90 funding awards.

ADDRESS: For obtaining an application package written request should be sent to: EPA ASHAA Coordination Center, c/o ATLIS Federal Services, Inc., 6011 Executive Blvd., Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm E–545, 401 M St., SW., Washington, DC 20460, Toll free: 800–835–6700, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Asbestos School Hazard Abatement Act (ASHAA) to offer financial assistance to financially needy schools so that they may abate asbestos materials which pose a serious health hazard to building occupants. Assistance is offered in the form of loans and/or grants and is available for public and non-profit private elementary and secondary schools. Since 1985, over $201 million has been offered to Local Education Agencies (LEAs) for 2,194 abatement projects.

In November, Congress appropriated $50 million for the 1990 asbestos in schools program. Congress intended that Federal funds under the ASHAA loan and grant program be directed to school districts which have both the most serious asbestos hazards and the greatest financial need. To apply for these funds a school district must submit a 1990 ASHAA application in accordance with the following schedule: (1) LEAs must submit applications to State ASHAA Designees by January 22, 1990, and (2) States must submit applications to EPA by February 2, 1990.

An application package for the 1990 award cycle may be obtained through the ASHAA Coordination Center by calling the toll free line: 1–800–462–6706 or by making a written request to the EPA ASHAA Coordination Center at the address listed under the ADDRESS unit. The package includes a policy statement explaining the selection process, an application containing detailed instructions for applying for funds, and the addresses of the State ASHAA Designees to whom LEAs should submit their applications. Applications will be made available after December 6, 1989. EPA will announce 1990 award recipients before the end of May 1990.

Dated: December 1, 1989.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 89–28611; Filed 12–6–89; 8:45 am]

BILLING CODE 6560–50–D0551.

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

November 29, 1989.

The Federal Communications Commission has submitted the following information collection requirements to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501–3520).

Copies of the submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street

NW., Suite 140, Washington, DC 20037. Persons wishing to comment on these information collections should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–3785. Copies of these comments should also be sent to the Commission. For further information contact Jerry Cowden, Federal Communications Commission, (202) 632–7513.

OMB Number: 3060–0299.

Title: Section 94.51, Time to Construct (Private Microwave).

Action: Extension.

Respondents: State or local governments, businesses (including small businesses), and non-profit institutions.

Frequency of Response: On occasion.

Estimated Annual Burden: 50 responses; 17 hours total annual burden; 20 minutes average burden per respondent.

Needs and Uses: Rule requires those licensees who are unable to construct their private microwave stations within 12 months to request an extension of time to construct their facilities. This information is used by Commission personnel to determine whether to grant an extension of time to construct.

OMB Number: 3060–0280.

Title: Section 90.633 (f) & (g), Conventional systems loading requirements (wide area systems).

Action: Extension.

Respondents: State or local governments, businesses, and non-profit institutions.

Frequency of Response: On occasion.

Estimated Annual Burden: 15 responses; 15 hours total annual burden; 1 hour average burden per response.

Needs and Uses: This rule provides for the authorization of wide area or ribbon private radio communication systems upon an appropriate showing of need.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–28531 Filed 12–6–89; 8:45 am]

BILLING CODE 6712–01–M

Reply Comments on AM Improvement Hearing

Reply comments in the matter of AM Improvement must be filed with the Secretary of the Federal Communications Commission before the close of business on Monday, December 18, 1989. These reply comments may be filed either in MM Docket No. 87–267 or in one of the pending AM dockets to which they relate.

The Commission may direct written questions to specific panelists who appeared at the November 16, 1989, *en banc* hearing. Copies of the questions and replies will be made a part of the record in MM Docket No. 87–267.

For further information on this matter please contact William Hassinger at (202) 632–6460.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–28532 Filed 12–6–89; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Sunbelt Broadcasters	San Clemente, CA	BPH–850712G4	89–503
B. Southern California Broadcasting Company	Do.	BPH–850712NV	
C. San Clemente Broadcasting Corp.	Do.	BPH–850712SI	
D. Stephanie Rodriguez Vallejos	Do.	BPH–850712SM	
E. On The Beach Broadcasting	Do.	BPH–850712UP	
F. James Harden and Claudia Harden, A Partnership	Do.	BPH–850712VI	
G. Portola Broadcasting Corporation	Do.	BPH–850712VJ	
H. Pamela McClatchey	Do.	BPH–850711NT (Previously dismissed)	
I. Michael J. Miller d/b/a San Clemente FM Services	Do.	BPH–850712SH (Previously dismissed)	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name above is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicant(s)
1. (See Appendix)	B,C,D,E,F,G,
2. Site Availability	A
3. Environmental	B,C,E,F,G,
4. Comparative	A,B,C,D,E,F,G
5. Ultimate	A,B,C,D,E,F,G

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

Additional Issue Paragraph

1. To determine whether the proposals of B (Southern), C (SCBC), D (Vallejos), E (Beach), F (Harden) and G (Portola) are consistent with the minimum separation requirements of Section 73.207 of the Commission's Rules and, if not, whether circumstances exist which warrant waiver of the appropriate rule section.

[FR Doc. 89–28621 Filed 12–6–89; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

FEMA Advisory Board Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, announcement is made of the following

FEMA Advisory Board meeting:

Name: Federal Emergency Management Agency Advisory Board meeting:

Date of Meeting: December 20, 1989.

Time: 9 a.m.–4 p.m.

Place: Federal Emergency Management Agency, Emergency Information and Coordination Center, 500 C Street SW., Washington, DC 20472.

Purpose: FEMA executives will provide reports on the Agency's budget, personnel and programs. The status of a review of Civil Defense Programs will be provided and discussed. Program development concepts for the protection of national infrastructure assets will be discussed. Sessions on the future work agendas for the Board and the Board Panels will be conducted. Discussions will include classified information. The Director has determined that the Board meeting should be closed to the public in accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II (1982)), because discussions will involve information that is specifically authorized to be kept "Secret" in the interest of national defense and is properly classified pursuant to the Executive Order.

Robert H. Morris,

Acting Director.

[FR Doc. 89–28603 Filed 12–6–89; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

City of Los Angeles Terminal Agreement

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200255–002

Title: City of Los Angeles Terminal Agreement.

Parties: City of Los Angeles, California Stevedore & Ballast Company.

Filing Party: Mr. Raymond P. Bender, Assistant City Attorney, P.O. Box 151, San Pedro, CA 90733–0101.

Synopsis: The Agreement reduces the assigned premises from 22.8 acres to 21.52 acres and reduces the monthly minimum guarantee from $121,600 to $114,773. The Agreement also provides that the monthly revenue sharing of wharfage, dockage, storage and demurrage shall be on a 50/50 from $1.00 until Port has received $143,467, then on a 75/25 basis thereafter (Port receives 25%).

By Order of the Federal Maritime Commission.

Dated: December 1, 1989.

Joseph C. Poling,

Secretary.

[FR Doc. 89–28525 Filed 12–6–89; 8:45 am]

BILLING CODE 6730–01–M

Port of Oakland Terminal Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments and protests are found in §§ 560.7 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–001953–007

Title: Port of Oakland Terminal Agreement.

Parties: Port of Oakland (Port), Matson Terminal, Inc. (Matson).

Filing Party: Mr. John E. Nolan, Assistant Port Attorney, 66 Jack London Square, Oakland, CA 94607.

Synopsis: The Agreement amends the basic agreement to adjust Matson's rent for certain leased marine terminal facilities in the Port's 7th Street Terminal Area, pursuant to provisions set forth in the basic agreement. Matson will pay the Port $131,857.00 a month for the period covered by the Agreement.

Agreement No.: 224–001953A–002

Title: Port of Oakland Terminal Agreement.

Parties: Port of Oakland (Port), Matson Terminal, Inc. (Matson).

Filing Party: Mr. John E. Nolan, Assistant Port Attorney, 66 Jack London Square, Oakland, CA 94607.

Synopsis: The Agreement amends the basic agreement to adjust Matson's rent for certain freight station facilities in the Port's 7th Street Terminal Area, pursuant to provisions set forth in the basic agreement. Matson will pay the Port $22,101.00 a month for the period covered by the Agreement.

By Order of the Federal Maritime Commission.

Dated: December 1, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–28553 Filed 12–6–89; 8:45 am]

BILLING CODE 6730–01–M

West Coast/Middle East and West Asia Rate Agreement

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010748–008

Title: West Coast/Middle East and West Asia Rate Agreement.

Parties: American President Lines, Ltd., Dampskibsselskabet AF 1912 Aktieselskab, Aktieselskabet Dampskibsselskabet Svendborg.

Synopsis: The proposed amendment would delete India, Pakistan, Bangladesh, Sri Lanka and Burma from the scope of the Agreement. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: December 1, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–28524 Filed 12–6–89; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89M–0491]

Sterling Drug Inc.; Premarket Approval of Original Biobrane® (Blue Label)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Sterling Drug Inc., New York, NY, for premarket approval, under the Medical Device Amendments of 1976, of the Original BioBrane® (Blue Label). After reviewing the recommendation of the General and Plastic Surgery Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of October 20, 1989, of the approval of the application.

DATES: Petitions for administrative review by January 8, 1990.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Palmer, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1090.

SUPPLEMENTARY INFORMATION: On May 2, 1988, Sterling Drug Inc., New York, NY 10016, submitted to CDRH an application for premarket approval of Original BioBrane®, a biosynthetic wound dressing. The device is indicated for use as a temporary coverage of clean, excised, full-thickness burn wounds, and is intended to remain adherent until autografting is clinically appropriate.

On June 24, 1988, the General and Plastic Surgery Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On October 20, 1989, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Kenneth A. Palmer (HFZ–410), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the Act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before January 8, 1990, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: November 29, 1989.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 89–28573 Filed 12–6–89; 8:45 am]

BILLING CODE 4160–01–M

[FDA 225–90–8400]

Memorandum of Understanding Between the Food and Drug Administration, Department of Health and Human Services, and the Agricultural and Livestock Service, Ministry of Agriculture of the Republic of Chile

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between FDA, Department of Health and Human Services, and the Agricultural and Livestock Service, Ministry of Agriculture of the Republic of Chile. This MOU affirms the parties' cooperation in establishing and implementing emergency procedures to ensure that fresh fruit exported from Chile to the United States is safe and wholesome and is offered for entry into the United States in accordance with the Federal Food, Drug, and Cosmetic Act.

DATES: The agreement became effective October 27, 1989.

FOR FURTHER INFORMATION CONTACT: Walter J. Kustka, Intergovernmental and Industry Affairs Staff (HFC–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1583.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and memoranda of understanding between FDA and others shall be published in the Federal Register, the agency is publishing notice of this memorandum of understanding.

Dated: November 30, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

Memorandum of Understanding Regarding

Cooperation in establishing and implementing emergency procedures to ensure the safety of fresh fruit exported to the United States from the Republic of Chile.

I. Purpose

The Food and Drug Administration ("FDA") of the Department of Health and Human Services of the United States of America, and the Agricultural and Livestock Service ("SAG"), (hereinafter the Parties), of the Ministry of Agriculture of the Republic of Chile, agree to cooperate to assure that fresh fruit exported from Chile to the United States is safe and wholesome, and is being offered for entry into the United States in accordance with the Federal Food, Drug and Cosmetic Act. Further, the parties have emergency procedures and this document establishes necessary communications to facilitate the resolution of problems.

II. Background

In consideration of the effects of the 1989 incident with fruit shipped from Chile to the United States, the potential impact on the public health, and the disruption of trade that it caused, the parties recognized the need to establish procedures to minimize the possibility of another such incident. The parties also agreed on the need to develop procedures that will minimize disruption of commerce if another such emergency should occur.

The Republic of Chile has instituted protective measures to avoid contamination or tampering of fresh fruit. The FDA has long maintained emergency procedures for handling situations with regulated products that threaten the health and safety of U.S. consumers. The FDA and the SAG have agreed to formalize their cooperative activities through this memorandum.

III. Responsibilities

A. Each Party will provide the other Party with a copy of its procedures for dealing with emergency situations involving fresh fruit that may present problems or concerns of major health significance.

B. When products subject to the regulatory authority of both parties are determined by either party to present a threat to public health, the finding party should promptly notify the other party by providing, the following information to the extent such information exists:

1. A description of the product sampled;
2. A description of the sampling procedure;
3. The name of vessel;
4. The pallet number;
5. Any other identifying codes and marks on products sampled;
6. A description of the methods of analysis and confirmation.

C. SAG agrees that it will enforce its emergency security regulations in Chile s necessary to assure the safety of fruit exported to the U.S. FDA will promptly notify SAG of any evidence that might warrant invoking those procedures. If that evidence consists of laboratory findings, efforts should be made jointly to verify those findings.

D SAG will verify that all the permanent security procedures to protect fresh fruit are being followed in relation to:

Agrichemical storerooms
Packing and selection plants (satellite plants)
Fruit processing centers and cold storage houses
Seaports and airports
Any laboratory used by SAG

E. The parties agree to consult immediately to maximize the protection of the public health and minimize the impact on commerce and to attempt to identify specific adulterated lots, whenever there is a well-founded suspicion of contamination or tampering.

F. FDA and SAG will exchange and provide information relative to known or suspected chenmical contamination of fruit resulting either from the misuse of chemicals or from intentional tampering. Such information will be made available on request and may include:

1. Methods and procedures for sampling
2. Methods of analysis
3. Methods of confirmation
4. Specifications and tolerances
5. Reference standards
6. Procedures for check analysis
7. Routine inspection procedures
8. Laws and regulations
9. Name of the grower, packer, shipper, and receiver, as appropriate

IV. Liaison Officers

The Parties agree to transmit the information required under this agreement to the liaison officer identified below.

A. For FDA: Director, Division of Emergency and Epidemiological, Operations, HFC–160, Office of Regional Operations, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–4667, Fax: 443–3757.

B. For SAG: Director of Plant Protection Division, 140 Bulnes Avenue, Santiago, Chile, Telephone: 6968500, Fax: 721812.

V. Entry Into Force, Duration, Extension, Amendment, Termination

This agreement enters into force upon signature by both parties and will remain in force for a period of 10 years. It may be renewed or amended by written consent of the Parties. It may be terminated by either Party upon thirty-day advance written notice to the other Party.

The Food and Drug Administration, Department of Health and Human Services, The United States of America.

Dated: October 27, 1989.

Frank E. Young,

Commissioner of Food and Drugs.

The Agricultural and Livestock Service, Ministry of Agriculture of The Republic of Chile.

Dated. October 27, 1989.

Octavio Errazuriz,

Ambassador of Chile.

[FR Doc. 89–28574 Filed 12–6–89; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

Program Announcement, Proposed Review Criteria, Funding Priority and Special Considerations for Special Project Grants to Schools of Public Health

The Health Resources and Services Administration (HRSA) announces acceptance of applications for Fiscal Year 1990 Special Project Grants to Schools of Public Health. This grant program is authorized under section 790A, title VII of the Public Health Service Act, as amended by the Health Professions Reauthorization Act of 1988, Public Law 100–607. Comments are invited on the proposed review criteria, funding priority and special considerations listed below.

Approximately $822,000.00 is available to fund 5 competitive grant awards.

Section 790A of the Public Health Service Act, as amended, authorizes the Secretary to award grants to schools of public health for the costs of planning, developing, demonstrating, operating, and evaluating projects:

(1) For preventive medicine;

(2) For health promotion and disease prevention;

(3) For increasing the enrollment in such schools of public health of individuals from disadvantaged backgrounds; and

(4) To improve access and quality in health care.

"A school of public health" means a school located in the United States which has been accredited by an organization recognized by the Secretary of the U.S. Department of Education. The Council on Education for Public Health is the recognized accrediting organization.

Grants will be awarded on a competitive basis. Schools of public health are encouraged to focus on projects that address national or regional issues and problems described in: The Future of Public Health (Institute of Medicine Study); Promoting Health/Preventing Disease: Objectives for the Nation; and the Sixth Report to the President and Congress on the Status of Health Professions in the United States. PHS has sent the accredited schools of public health copies of these documents.

Some of the key public health education and training issues identified in these reports are: Substance Abuse; HIV/AIDS; Health Promotion and Disease Prevention; Geriatrics; Environmental Health; Personnel Shortages; Recruitment of Physicians, Scientists, Engineers, and Disadvantaged; and Training of Student to Work in Public Health Agencies.

Proposed Review Criteria

The HRSA proposes to review applications taking into consideration the following factors:

- The degree to which the proposed project adequately meets legislative intent;
- The background and rationale for the proposed project;
- Whether the project contains clearly stated realistic and achievable national or regional objectives which are described in: The Institute of Medicine study titled The Future of Public Health; Objectives for the Nation; and the Sixth Report to the President and Congress on the Status of Health Professions in the United States;
- The extent to which the project contains a methodology which is integrated and compatible with project objectives, including collaborative arrangements and feasible workplans;
- Evaluation plans and procedures for program and trainees, if applicable;
- The administrative and management capability of the applicant to carry out the proposed project, including institutional infrastructure and resources;
- The extent to which the budget justification is complete, cost-effective and includes cost-sharing, when aplicable; and
- Where there is an institutional plan and commitment for self-sufficiency when Federal support ends.

In addition, the following mechanisms may be applied in determining the funding of approved applications.

1. Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.

2. Funding priorities—favorable adjustment of review scores when applications meet specified objective criteria.

3. Special considerations—enhancement of priority scores by merit reviewers based on the extent to which applicants address special areas of concern.

The Administration is not proposing a funding preference for Fiscal Year 1990.

Proposed Funding Priority for FY 1990

For Fiscal Year 1990, HRSA proposes to give a funding priority to projects that both involve trainees and have a greater percentage of underrepresented minority trainees involvement in their activities than the percentage of full-time equivalent underrepresented minority trainees enrolled in the school of public health during the previous academic year.

For purposes of this funding priority, the following definition applies. "Underrepresented minority" means a trainee who comes from a racial or ethnic group whose representation in the health professions discipline is a lesser percentage than its population parity in the United States.

Certain minority population groups continue to be underrepresented in the health professions and have insufficient access to health care. Therefore, increased underrepresented minority involvement will help promote equal access to health care. Accordingly, this funding priority is designed to promote, through special project grants to schools of public health initiatives that will encourage and support increased involvement of underrepresented minority health trainees.

Proposed Special Consideration for FY 1990

It is proposed to give a special consideration to applications which address the following areas of emphasis and issues:

(1) Substance abuse;
(2) HIV/AIDS;
(3) Geriatrics;
(4) Environmental health; and
(5) Training students to work in public health agencies.

These issues are discussed in The Future of Public Health (Institute of Medicine Study); Promoting Health, Preventing Disease: Objectives for the Nation (HHS Report); and The Sixth Report to the President and Congress on the Status of Health Professions in the United States.

The emphasis areas and issues identified above are current problems facing public health professionals in governmental, private and voluntary health agencies and organizations. Accredited schools of public health are in a unique position to develop and expand education and training programs for resources development to address these national and/or regional issues.

Interested persons are invited to comment on the proposed review criteria, proposed funding priority and proposed special considerations. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the Fiscal Year 1990 award cycle, this comment period has been reduced to 30 days. All comments received on or before January 9, 1990 will be considered before the final reveiw criteria, funding priority, and special consideration will be applied. No funds will be allocated or final selections made until a final notice is published stating whether the review criteria, funding priority and special considerations will be applied.

Written comments should be addressed to: Director, Division of Associated and Dental Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8–101, 5600 Fishers Lane, Rockville, MD 20857.

All comments received will be available for public inspection and copying at the Division of Associated and Dental Health Professions, at the above address, weekdays, (Federal holidays excepted), between the hours of 8:30 a.m. and 5:00 p.m.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application and General Instructions have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060. The supplemental instructions for this program are being submitted for OMB review.

Application materials and questions regarding grants policy should be directed to: Grants Management Officer, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (301) 443–6857.

Completed applications should be returned to the Grants Management Officer at the above address.

Questions concerning the programmatic aspects of Special Project Grants to Schools of Public Health should be directed to: Chief, Public Health Professions Branch, Division of Associated and Dental Health Professions, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C–09, Rockville, MD 20857, Telephone: (301) 443–6757.

The application deadline date is January 12, 1990. Applications shall be considered as meeting the deadline if they are either:

(1) received on or before the deadline date, or

(2) postmarked on or before the deadline and received in time for

submission to the independent reveiw group.

A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications received after the deadline will be returned to the applicant.

This program will be listed at 13.188 in the Catalog of Federal Domestic Assistance and is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100)

Dated December 1, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89-28590 Filed 12-4-89; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

National Cancer Institute; Meeting of Developmental Therapeutics Contracts Review Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Developmental Therapeutics Contracts Review Committee, National Cancer Institute, National Institutes of Health, December 15, 1989, Building 31C, Conference Room 9, Bethesda, Maryland 20892.

This meeting will be open to the public on December 15 from 1 p.m. to 2 p.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552(c)(6), title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public on December 15 from 2 p.m. to adjournment for the review, discussion and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would consitiute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days before the meeting due to changes in the schedule of the meeting.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Lalita Palekar, Executive Secretary, Developmental Therapeutics Contracts Review Committee, 5333 Westbard Avenue, Room 805, Bethesda, Maryland 20892 (301/496-7575) will furnish substantive program information.

Dated: December 1, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-28704 Filed 12-6-89; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, as amended most recently in pertinent part at 51 FR 8032, March 7, 1986, and 53 FR 2890, February 2, 1988) is amended to reflect the modification of some functions in the Food and Drug Administration.

FDA proposes to establish a Speechwriting Staff and a Management Staff in the Office of Public Affairs (OPA). In addition, the speechwriting function for the Commissioner will be transferred from the Office of Executive Operations to the new Speechwriting Staff. Establishing a Speechwriting Staff in OPA will allow for greater coordination of the Commissioner's speeches with other press initiatives. The Management Staff is being established to perform administrative activities in OPA.

Section HF-B Organization and Functions is amended as follows:

1. Insert new subparagraphs (e-4) and (e-5) reading as follows:

(e-4) *Speechwriting Staff (HFAJD).* Plans, develops, and coordinates projects to communicate broad and controversial issues to public, private, professional, academic, and international audiences.

Presents and develops authoritative Agency public policy positions in speeches, editorial documents, and other written material for use by the Commissioner.

Prepares speeches for the Commissioner, including drafting of texts and obtaining appropriate Agency clearances.

(e-5) *Management Staff (HFAJE).* Directs the effective utilization of all management resources by coordinating the management, facilities, budget, and equipment resources for the Office Public Affairs.

Reviews organizational, management, and administrative policies of the Office to appraise the efficiency and effectiveness of operations.

Identifies potential management problems and/or needs and plans, develops and conducts management studies.

2. Delete subparagraph (a-1), Office of Executive Operations (HFA-D) and insert a new subparagraph (a-1), Office of Executive Operations (HFA-D).

(a-1) *Office of Executive Operations (HFA-D).* Coordinates identification of and expedites development and implementation of the Agency's highest program priorities for the Commissioner.

Coordinates and facilitates, for the Commissioner, program initiatives and resolution for program issues involving more than one component of the Agency.

Advises the Commissioner, Deputy Commissioner, other Policy Board members and key Agency officials on all activities that affect Agencywide programs, projects, and initiatives.

Performs special Agencywide assignments involving complex problems and issues related to Agency programs, strategies, and activities.

Assures that materials in support of recommendations presented for the Commissioner's consideration are comprehensive, accurate, fully discussed, and encompass the issues involved.

Reviews, analyzes, and evaluates pertinent aspects of the Agency's ongoing programs and consults with appropriate Policy Board members to insure a comprehensive approach toward identifying and resolving problems.

Provides direct support to the Commissioner and Deputy Commissioner, including briefing material, background information for meetings, and responses to outside inquiries.

Provides correspondence control for the Commissioner and controls and provides all Agency public correspondence directed to the Commissioner. Develops and operates tracking systems designed to identify and resolve early warning and bottleneck problems with executive correspondence.

Tracks Federal Register documents and responses to executive communication memoranda directed to, or of interest to, the Commissioner and Deputy Commissioner.

Informs appropriate Agency staff of the decisions and assignments made by

the Commissioner and Deputy Commissioner, reviews and coordinates all of the Commissioner's Agency communications and concurrences, and secures background data and revisions from appropriate agency components.

Coordinates the Agency's communications with PHS and HHS, including correspondence for the Assistant Secretary for Health and Secretarial signatures.

Reviews Commissioner's correspondence for program issues, and monitors testimony with program implications.

Prepares speeches for the Deputy Commissioner, including drafting of texts and obtaining appropriate Agency clearances.

Dated: November 14, 1989.

Wilford J. Forbush,

Director, Office of Management, PHS.

[FR Doc. 89-28528 Filed 12-6-89; 8:45 am]

BILLING CODE 4160-01-M

Social Security Administration

Privacy Act of 1974; Computer Matching Program

AGENCY: Social Security Administration (SSA), Department of Health and Human Services (HHS).

ACTION: Publication of Notice of a computer matching program to comply with public law (Public Law) 100-503, the Computer Matching and Privacy Protection Act of 1988.

SUMMARY: We are publishing notice of a computer matching program that SSA conducts that is subject to the requirements of Public Law 100-503. The purpose of this publication is to meet the reporting and publication requirements of Public Law 100-503.

DATES: We filed a report of SSA's matching program that is subject to Public Law 100-503 with the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives and Office of Information and Regulatory Affairs, Office of Management and Budget on December 1, 1989. The matching program is effective as indicated in the notice that apprears in this publication below.

ADDRESSES: Interested parties may comment on this notice by writing to the SSA Privacy Officer, Social Security Administration, 3-D-1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The SSA Privacy Officer at the address above.

SUPPLEMENTARY INFORMATION:

A. General

Public Law 100-503, the Computer Matching and Privacy Protection Act of 1988, amended the Privacy Act (5 U.S.C. 522a) by adding certain protections for individuals applying for and receiving Federal benefits. The law regulates the use of computer matching by Federal agencies when records relating to such persons in a system of records are matched with other Federal, State, and local government records. The amendments require Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with source agencies;

(2) Provide notification to aplicants and beneficiaries that their records are subject to matching;

(3) Verify match findings and provide a 30-day notice and opportunity to protest before reducing, suspending, or terminating an individual's benefits or payments;

(4) Furnish detailed reports to Congress; and

(5) Establish a Data Integrity Board that must approve match agreements.

Public Law 100-503, as amended by Public Law 101-506, requires that we implement the above requirements by January 1, 1990.

B. SSA Computer Match Subject to Public Law 100-503

We have taken action to ensure that all of SSA's computer matching programs which were being conducted prior to enactment of Public Law 100-503 comply with the requirements of the law. Included below is a brief description of a match that SSA will be conducting as of January 1, 1990 or later. Also included in this publication is a detailed notice of the match.

- SSA Matching with Internal Revenue Service Address Data

Purpose: To enable SSA to obtain correct addresses for title II beneficiaries and title XVI recipients with outstanding overpayments.

Dated: December 1, 1989.

Gwendolyn S. King,

Commissioner of Social Security.

Notice of Computer Matching Program; Social Security Administration (SSA) Matching with Internal Revenue Service (IRS) Address Data

A. Participating Agencies

SSA and IRS.

B. Purpose of the Matching Program

The purpose of this matching program is for SSA to obtain from IRS correct mailing addresses for selected title II beneficiaries and title XVI recipients. Individuals included in this matching program include those with outstanding overpayments but whose mailing address in SSA records is incorrect.

C. Authority for Conducting the Matching Program

Section 6103(m)(2) of the Internal Revenue Code provides for disclosure, upon written request, of a taxpayer's mailing address for use by officers, employees, or agents of a Federal agency for the purpose of locating such taxpayer to collect a Federal claim against the taxpayer in accordance with sections 3711, 3717, and 3718 of title 31 of the United States Code. SSA is authorized to recover overpayments from title II beneficiaries and title XVI recipients by sections 204 and 1631(b) of the Social Security Act.

D. Categories of Records and Individuals Covered by the Match

SSA furnishes IRS with selected records from its Master Beneficiary Record, HHS/SSA/OSR, 09-06-0090 (last published in the **Federal Register** on May 1, 1986, page 16223) and from its Supplemental Security Income Record system of records, HHS/SSA/OSR 09-06-0103 (last published in the **Federal Register** on October 13, 1982, page 45635). The selected individuals include unlocatable and overpaid beneficiaries/recipients who are not currently receiving title II or title XVI payments. The IRS records consist of data on individuals maintained in the system of records, IRS 24.030, Individual Master File, Returns and Information Processing (last published in the **Federal Register** on March 1, 1988, page 6389).

E. Inclusive Dates of the Match

The matching program will begin on January 1, 1990, or 30 days after the matching program's agreement has been submitted to Congress, whichever is later. The matching program will continue for 18 months from the beginning date and may be extended for an additional 12 months thereafter.

F. Address for Receipt of Public Comments or Inquiries

Individuals wishing to comment on this matching program should submit comments within 30 days from the date of publication to the SSA Privacy Officer, Room 3-D-1 Operations

Building, 6401 Security Boulevard, Baltimore, Maryland, 21235.

[FR Doc. 89-28591 Filed 12-6-89; 8:45 am]

BILLING CODE 4190-11

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-89-2086]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 30, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

[FR Doc. 89-28569 Filed 12-6-89; 8:45 am]

BILLING CODE 4210-01-M

Submission of Proposed Information Collection to OMB

Proposal: Establishment of Ceiling Rent for Public Housing (FR-2529).

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: Public Housing Authorities and Indian Housing Authorities will use the information collected to determine if an alternative rent other than income-based rent should be charged tenants in public housing. The limit of the amount of rent these tenants should pay is in effect for no more than three years.

Form Number: None.

Respondents: State or Local Governments.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	1,291		1		17.166		22,161

Total Estimated Burden Hours: 22,161.

Status: New.

Contract: Edward C. Whipple, HUD, (202) 426-0744, John Allison, OMB, (202) 395-6880.

Dated: November 30, 1989.

Submission of Proposed information Collection to OMB

Proposal: Supplemental Application and Processing Form—Housing for the Elderly and Handicapped.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: Borrowers of direct-loan or insured mortgage funds for multifamily housing for the elderly or handicapped will use the form to supply essential information concerning special services the borrower plans to provide (and separate budgets for these services).

Form Number: HUD-92013-E.

Respondents: Businesses or Other For-Profit and Non-Profit Institutions.

Frequency of Submission: One Time.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD-92013-e	400		1		.75		300

Total Estimated Burden Hours: 300.

Status: Extension.

Contact: Edward M. Winiarski, HUD, (202) 426-7624, John Allison, OMB, (202) 395-6880.

Dated November 30, 1989.

[FR Doc. 89-28569 Filed 12-6-89; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-967-4230-15]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that decisions to issue conveyance under the provisions of secs. 12(c), 14(h)(8) and 22(f) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1611(c), 1613(h)(8), 1621(f), and the 1982 CNI Settlement Agreement of January 10, 1983, entered into pursuant to ANCSA and Secs. 1302(h) and 1430(a) of the Alaska National Interest Lands Conservation Act of December 2, 1980, Pub. L. 96-487, 94 Stat. 2371, 2475, 2531, will be issued to Chugach Alaska Corporation for approximately 127 acres. The lands involved are in the vicinity of Seward Meridian, Alaska.

Serial Number	Land Description	Approximate Acreage
AA-50379-7	T. 3 S., R. 10 E.	60
AA-50379-22	T. 2 N., R. 1 E.	67

A notice of the decisions will be published once a week, for four (4) consecutive weeks, in the Anchorage Times. Copies of the decisions may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decisions, an agency of the Federal government or regional corporation, shall have until January 8, 1990, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,

Chief, Branch of KCS Adjudication.

[FR Doc. 89-28576 Filed 12-6-89; 8:45 am]

BILLING CODE 4310-JA-M

[WY-060-09-4120-17]

Public Notice of Availability for Drilling

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Notice of Availability of 232 Pages of Lithologic Logs, 106 Geophysical Logs, and 210 Pages of Quality Analyses for Coal Drill Holes. These holes were drilled between 1984 and 1987 using public funds by the Bureau of Land Management.

SUMMARY: Notice is hereby given that data for 106 coal drill holes are now available to the public for drilling in Campbell, Converse, Johnson, and Sheridan counties, Wyoming.

Reproduction of the data will be expedited through written request only. Copies of the data for interested parties will not be processed through telephone contact.

A list of the legal descriptions for the areas drilled is as follows:

T. 38 N., R. 74 W., SWSE, Section 1
T. 38 N., R. 74 W., SESW, Section 17
T. 39 N., R. 69 W., SESW, Section 2
T. 39 N., R. 69 W., NESW, Section 14
T. 40 N., R. 70 W., SWNE, Section 8
T. 40 N., R. 70 W., NENW, Section 20
T. 40 N., R. 70 W., NWNE, Section 29
T. 40 N., R. 70 W., NWNE, Section 29
T. 40 N., R. 70 W., NWSW, Section 29
T. 41 N., R. 70 W., NWSW, Section 9
T. 41 N., R. 70 W., NWSW, Section 11
T. 41 N., R. 70 W., SESW, Section 14
T. 41 N., R. 70 W., NENE, Section 18
T. 41 N., R. 70 W., NESW, Section 19
T. 41 N., R. 70 W., SWSW, Section 21
T. 41 N., R. 70 W., NWSW, Section 27
T. 41 N., R. 71 W., SW¼, Section 8
T. 41 N., R. 71 W., SESE, Section 8
T. 41 N., R. 71 W., NESW, Section 14
T. 41 N., R. 71 W., SENW, Section 14
T. 41 N., R. 71 W., SWNW, Section 15
T. 41 N., R. 71 W., Section 17
T. 41 N., R. 71 W., NESW, Section 17
T. 41 N., R. 71 W., Section 22
T. 41 N., R. 71 W., SWNW, Section 15
T. 41 N., R. 71 W., NWSE, Section 22
T. 41 N., R. 71 W., NENW, Section 28
T. 42 N., R. 71 W., NENE, Section 12
T. 43 N., R. 70 W., NESW, Section 5
T. 43 N., R. 70 W., NESW, Section 7
T. 43 N., R. 70 W., SWSE, Section 8
T. 43 N., R. 70 W., NWSW, Section 26
T. 43 N., R. 70 W., SWSW, Section 26
T. 43 N., R. 70 W., SESE, Section 27
T. 43 N., R. 70 W., NESW, Section 33
T. 43 N., R. 70 W., NWNE, Section 35
T. 43 N., R. 70 W., SWNE, Section 35
T. 43 N., R. 71 W., SWNE, Section 2
T. 43 N., R. 71 W., NESW, Section 7
T. 43 N., R. 71 W., NWSE, Section 11
T. 43 N., R. 71 W., SWNE, Section 13
T. 43 N., R. 71 W., SWSW, Section 25
T. 43 N., R. 72 W., SENE, Section 12
T. 44 N., R. 70 W., SWNE, Section 34
T. 44 N., R. 70 W., SWNE, Section 35
T. 44 N., R. 71 W., NENE, Section 3
T. 44 N., R. 71 W., NESE, Section 19
T. 44 N., R. 72 W., SWSE, Section 5
T. 44 N., R. 72 W., SWNW, Section 28
T. 45 N., R. 70 W., NESW, Section 10
T. 45 N., R. 70 W., SENW, Section 15
T. 45 N., R. 70 W., NESE, Section 19
T. 45 N., R. 70 W., NESW, Section 21
T. 45 N., R. 70 W., SWSE, Section 27
T. 45 N., R. 70 W., NENE, Section 28
T. 45 N., R. 70 W., NESE, Section 30
T. 45 N., R. 70 W., SESE, Section 34
T. 45 N., R. 71 W., NESW, Section 11
T. 46 N., R. 70 W., SESE, Section 5
T. 46 N., R. 70 W., NWSE, Section 5
T. 47 N., R. 71 W., NWNE, Section 17
T. 47 N., R. 71 W., NWNW, Section 20
T. 47 N., R. 71 W., NENE, Section 21
T. 47 N., R. 72 W., NWNW, Section 1
T. 47 N., R. 72 W., SWSW, Section 13
T. 47 N., R. 72 W., NESE, Section 35
T. 48 N., R. 71 W., NWNE, Section 7
T. 48 N., R. 71 W., SENE, Section 17
T. 48 N., R. 71 W., NESE, Section 18
T. 48 N., R. 71 W., SESE, Section 34
T. 48 N., R. 71 W., NESE, Section 34
T. 48 N., R. 72 W., SENW, Section 1
T. 48 N., R. 72 W., NWNW, Section 12
T. 48 N., R. 72 W., NESE, Section 13
T. 48 N., R. 72 W., SWSW, Section 24
T. 48 N., R. 72 W., NWSW, Section 25
T. 49 N., R. 70 W., NWNW, Section 18
T. 49 N., R. 71 W., SWSW, Section 11
T. 49 N., R. 71 W., NENE, Section 15
T. 49 N., R. 71 W., SWSE, Section 22
T. 49 N., R. 71 W., SENW, Section 24
T. 49 N., R. 71 W., NWNW, Section 26
T. 49 N., R. 71 W., NESW, Section 28
T. 49 N., R. 71 W., SWSW, Section 29
T. 49 N., R. 71 W., NWNE, Section 30
T. 49 N., R. 71 W., SESE, Section 31
T. 49 N., R. 71 W., SWNE, Section 34
T. 49 N., R. 71 W., SENE, Section 35
T. 49 N., R. 72 W., SWSE, Section 25
T. 50 N., R. 71 W., SWNW, Section 35
T. 50 N., R. 80 W., NWSE, Section 1
T. 50 N., R. 80 W., NWSE, Section 19
T. 50 N., R. 80 W., NWNE, Section 21
T. 50 N., R. 80 W., Section 34
T. 50 N., R. 81 W., SENE, Section 1
T. 50 N., R. 81 W., NESE, Section 10
T. 50 N., R. 81 W., NESW, Section 27
T. 51 N., R. 81 W., NENE, Section 1
T. 51 N., R. 81 W., SESE, Section 12
T. 51 N., R. 81 W., NENW, Section 18
T. 51 N., R. 81 W., SWSE, Section 23
T. 54 N., R. 81 W., NWSW, Section 12
T. 54 N., R. 81 W., NWNW, Section 25
T. 58 N., R. 84 W., SWSE, Section 23
T. 58 N., R. 84 W., NWSE, Section 23
T. 58 N., R. 84 W., SENE, Section 24
T. 58 N., R. 84 W., NWSE, Section 24
T. 58 N., R. 84 W., SWNE, Section 29
T. 58 N., R. 84 W., SWNE, Section 32

FOR FURTHER INFORMATION OR TO REQUEST COPIES: Written requests for more information or to request copies may be sent to: James W. Monroe,

District Manager, Casper District Bureau of Land Management, 1701 East "E" Street, Casper, Wyoming 82601.

Dated: November 28, 1989.

James W. Monroe,

District Manager.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-28575 Filed 12-6-89; 8:45 am]

BILLING CODE 4310-22-M

[AZ-040-00-4212-12; A 24124]

Realty Action; Designation of Public Lands To Be Included in State Exchange in Graham and Cochise Counties, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Designation of public lands for transfer out of federal ownership in exchange for lands owned by the State of Arizona.

SUMMARY: BLM proposes to exchange public land with the State of Arizona in order to achieve more efficient management of the public lands through consolidation of ownership.

All of the public lands in the following described sections are being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian, Arizona

T. 9 S., R. 26 E.,
Secs. 22, 25–27, 35.
T. 10 S., R. 26 E.,
Secs. 1, 3, 4, 9–12.
T. 15 S., R. 22 E.,
Secs. 20, 22–25, 27–29, 36.
T. 15 S., R. 31 E.,
Secs. 1, 3, 4, 8–10, 13, 15–17, 20–23, 25–27.
T. 15 S., R. 32 E.,
Secs. 6, 7, 18, 19, 30, 31.
T. 16 S., R. 22 E.,
Secs. 1–4, 6, 8–10, 12, 13, 17, 18, 21–24.
T. 16 S., R. 23 E.,
Secs. 4, 6, 23, 24.
T. 16 S., R. 30 E.,
Secs. 1, 11–14, 23–25.
T. 16 S., R. 31 E.,
Secs. 1, 4–8, 11–13, 17–21, 28–30.
T. 17 S., R. 21 E.,
Sec. 13.
T. 17 S., R. 32 E.,
Secs. 6, 10, 11, 15, 21–23, 26, 27.
T. 19 S., R. 21 E.,
Secs. 14, 15.
T. 19 S., R. 22 E.,
Secs. 5, 6, 9, 19, 21–23, 25–28.
T. 19 S., R. 23 E.,
Sec. 30.
T. 19 S., R. 24 E.,
Sec. 4.
T. 19 S., R. 27 E.,
Sec. 17.
T. 20 S., R. 27 E.,
Secs. 1, 12, 13, 22, 24, 25, 27, 28, 34.
T. 20 S., R. 28 E.,
Secs. 6, 7, 18, 19, 30, 31.
T. 21 S., R. 23 E.,
Secs. 20–23, 26–30.
T. 21 S., R. 25 E.,
Secs. 29, 31, 33.
T. 21 S., R. 28 E.,
Secs. 5–8, 18–20, 30, 35.
T. 21 S., R. 30 E.,
Secs. 18, 19, 30.
T. 22 S., R. 23 E.,
Secs. 4–6.
T. 22 S., R. 24 E.,
Secs. 20, 22, 24, 25.
T. 22 S., R. 25 E.,
Secs. 5, 19, 28–30.
T. 22 S., R. 28 E.,
Secs. 6, 7, 18, 23, 30, 34.
T. 22 S., R. 29 E.,
Secs. 15, 24, 25, 31.
T. 22 S., R. 32 E.,
Secs. 17, 20.
T. 23 S., R. 23 E.,
Secs. 4, 8, 9, 15, 18, 19, 22, 28.
T. 23 S., R. 28 E.,
Secs. 3, 10, 11.
T. 24 S., R. 28 E.,
Secs. 11, 13.
T. 24 S., R. 29 E.,
Secs. 1, 5, 6, 15, 17.

The public lands within the above-described sections comprise 61,858.00 acres, more or less.

Subject to valid existing rights, the above-described lands will be segregated from entry under the mining laws, except the mineral leasing laws, effective upon publication of this notice in the Federal Register. The segregative effect will terminate upon issuance of patent to the State of Arizona or upon expiration of two years from the effective date, or by publiction of a Notice of Termination by the Authorized Officer, whichever comes first.

Final determination on disposal will await resolution of pending litigation regarding the State of Arizona's land exchange program and completion of an environmental analysis.

DATES: Until January 22, 1990, interested parties may submit comments to the Safford District Manager, 425 East Fourth Street, Safford, Arizona 85546.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange and exact legal descriptions are available at the Safford District Office.

Dated: November 27, 1989.

Ray A. Brady,

District Manager.

[FR Doc. 89-28579 Filed 12-6-89; 8:45 am]

BILLING CODE 4310-32-M

[AZ-920-00-4212-13; A-23217-B]

Exchange of Public and Private Mineral Estates in Yavapai and Mohave Counties; AZ

November 28, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange of mineral estates.

SUMMARY: This action informs the public of the completion of a mineral estate exchange between the United States and Santa Fe Pacific Railroad Company, and delineates administration of the mineral estate conveyed to the United States.

FOR FURTHER INFORMATION CONTACT: John Gaudio, BLM, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, (602) 241–5534.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the mineral estate in the following described 4,966.10 acres of land has been transferred out of Federal ownership pursuant to section 206 of the Federal Land Policy and Management Act of 1976:

Gila and Salt River Meridian

T. 13 N., R. 4 W.,
Sec. 6, lot 5.
T. 13 N., R. 5 W.,
Sec. 7, lots 3 and 4, E½ SW¼
T. 13 N., R. 6 W.,
Sec. 5, lots 4, 9, 10 and 13.
T. 13 N., R. 7 W.,
Sec. 23, N½ SE¼, SE¼ SE¼;
Sec. 26, NE¼.
T. 13 N., R. 8 W.,
Sec. 13, NE¼NE¼, S½NE¼.
T. 15 N., R. 9 W.,
Sec. 7, lots 1 to 4, incl., E½, E½W½;
Sec. 17, SW¼;
Sec. 18, lots 1 to 4, incl., E½, E½W½.
T. 16 N., R. 9 W.,
Sec. 4, lots 1 to 3, incl., S½NE¼, E½SW¼ NW¼, SE¼NW¼, NE¼SW¼, E½ NW¼SW¼, S½SW¼, SE¼;
Sec. 8, E½NE¼NE¼, SE¼SW¼NE¼, SE¼NE¼, NE¼SW¼, S½NW¼SW¼, S½SW¼, SE¼.
Sec. 13, all;
Sec. 18, E½;
Sec. 19, E½;
Sec. 30, lots 2 to 4, incl., E½, E½W½.

In exchange, the mineral estate in 4,990.44 acres of land has been conveyed to the United States. The mineral estate conveyed to the United States in the following described land is being administered by the National Park Service as part of Grand Canyon National Park and Lake Mead National Recreation Area:

Gila and Salt River Meridian

T. 29 N., R. 11 W.,

Sec. 3, lots 1 to 4, incl., S½N½, S½.
T. 30 N., R. 11 W.,
Sec. 21, all.
T. 32 N., R. 13 W.,
Sec. 31, lots 1 to 4, incl. E½, E½W½;
Sec. 33, all.

The mineral estate conveyed to the United States in the remaining following described land, in or adjacent to three wilderness study areas, will be administered by the Bureau of Land Management for its public values:

Gila and Salt River Meridian

T. 13 N., R. 14 W.,
Sec. 21, all.
T. 13 N., R. 15 W.,
Sec. 25, W½.
T. 18 N., R. 16 W.,
Sec. 8, NW¼NW¼;
Sec. 13, W½W½.
T. 19 N., R. 16 W.,
Sec. 15, all.
T. 19 N., R. 17 W.,
Sec. 33, all.

The purpose of this Notice is to inform the public and interested state and local government officials of this exchange of public and private mineral estates, and to outline administration of the mineral estate conveyed to the United States.

Marsha Luke,

Chief, Branch of Lands Operations.

[FR Doc. 89-28580 Filed 12-6-89; 8:45 am]

BILLING CODE 4310-32-M

[CA-050-00-4212-14; CA 26026]

Realty Action; Noncompetitive Sale of Public Land in Shasta County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; noncompetitive sale of public land in Shasta County.

SUMMARY: The following public lands in Shasta County, California have been examined and found suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), to the County of Shasta, at not less than the fair market value. The County of Shasta proposes to use the land for a buffer zone around the existing West Central Landfill and for future expansion of the landfill.

Mount Diablo Meridian

T. 30 N., R. 6 W.,
Section 4: Lots 1 and 2 of the NE¼, N½ NW¼SE¼, S½SW¼SE¼, E½SE¼.
Containing 280.03 acres, more or less.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first. The lands are not needed for Federal purposes. The patent, when issued, would be subject to the following terms, conditions, and reservations:

Excepting and Reserving to the United States

1. A right-of-way for ditches and canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

2. All mineral deposits shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

And Subject To

A right-of-way to Pacific Gas and Electric for a power line (CA 24929).

ADDRESS: Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Redding Resource Area, 355 Hemsted Drive, Redding, California 96002.

DATE: For a period of 45 days from the date of publication of this notice, interested persons may submit comments to the Area Manager, Redding Resource Area, at the above address.

FOR FURTHER INFORMATION CONTACT: Ilene Emry, Realty Specialist, at the above address.

Dated: November 21, 1989.

Mark T. Morse,

Area Manager.

[FR Doc. 89-28581 Filed 12-6-89; 8:45 am]

BILLING CODE 4310-40-M

[CA-050-4212-13; CA 26128]

Realty Action; Exchange; Public Lands and Private Lands in Lake County, San Diego County and Yolo County, CA

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The following described public lands have been determined to be suitable for disposal under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2756).

San Bernardino Meridian

Tract 1: T. 10S., R. 3 W.,
Sec. 33, NW¼NW¼.
Containing 40.86 acres more or less.

The Trust for Public Land, 116 New Montgomery St., 4th Floor, San Francisco, CA 94102, has applied to acquire the above described public lands in exchange for private land in the Cache Creek Area of Critical Environmental Concern, described as:

Mount Diablo Meridian

Tract 1: T. 12 N., R. 4 W.,
Sec. 6, Lot 1, Lot 3, Lot 4, Lot 5, SE¼NW¼.
Tract 2: T. 13 N., R. 4 W.,
Sec. 31, Lot 4.
Containing 232.15 acres more or less.

SUPPLEMENTARY INFORMATION: A mineral evaluation has been completed on the public lands. None of the tracts were found to be prospectively valuable for minerals. The minerals on all the tracts will be transferred when patent is issued.

There will be reserved to the United States in the applied for lands, a right-of-way for ditches and canals constructed by the authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

The purpose of this exchange is to acquire lands along Cache Creek in Lake County and Yolo County, California for Bald Eagle habitat and Tule Elk habitat. The Bald Eagle is a Federal and state listed Endangered Species.

Publication of this notice in the **Federal Register** shall segregate the applied for public lands from all other forms of appropriation and the public land laws, including the mining laws, for a period of two years. This exchange is expected to be consummated before the end of that period.

FOR FURTHER INFORMATION CONTACT: Catherine Robertson, Clear Lake Area Manager, Bureau of Land Management, 555 Leslie Street, Ukiah, CA 95482; Phone (707) 462-3873. Detailed information concerning the exchange including the environmental assessment, is available for review.

DATES: For a period of 45 days from the publication of this notice in the **Federal Register**, interested parties may submit comments to the Ukiah District Manager, Bureau of Land Management, 555 Leslie Street, Ukiah, CA 95482. Any adverse comments will be evaluated by the California State Director, Bureau of Land Management, who may vacate or modify this realty action and issue a final determination. In the absence of a vacation or modification this realty action will become the final determination of the Bureau.

James F. Dawson,

Acting Clear Lake Resource Area Manager.

[FR Doc. 89-28582 Filed 12-6-89; 8:45 am]

BILLING CODE 4310-40-M

[CA-010-00-4212-13, CA15889]

Realty Action; Exchange of Public and Private Lands in El Dorado County, California; Correction

AGENCY: Bureau of Land Management, Interior.

SUMMARY: In the notice published in Federal Register, Vol. 54 FR, Page 48817, on November 27, 1989, make the following

Corrections

1. On page 48817, in the third column, in the summary, in the first paragraph, remove "acquisition" and insert "disposal."

2. The preceding notice incorrectly described Parcel B (under Selected Public Land) as being located in T.9 N, R.9 E., MDM.

The corrected legal description for Parcel B is as follows.

Selected Public Land

Parcel B (22.70ac)

T.9 N., R.10 E., MDM
Sec. 29: lot 7 (cancelled M.S. 1453)
Sec. 32: lot 3 (cancelled M.S. 1453)

D.K. Swickard,

Area Manager.

[FR Doc. 89-28623 Filed 12-6-89; 8:45 am]

BILLING CODE 4310-40-M

[CO-030-09-4212-13-2200]

Realty Action; State of Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Realty Action COC-49708, Proposed exchange of public lands for private lands in San Miguel County, Colorado.

SUMMARY: Certain parcels within the following described public land have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

New Mexico Principal Meridian, Colorado

T. 41 N., R. 13 W.,
Section 27, NW¼NW¼.
T. 45 N., R. 10 W.,
Section 33, S½S½;
Section 34, SW¼SW¼.
T. 43 N., R. 10 W.,
Section 19, Lot 4, NE¼NW¼;
Section 28, E½NW¼, NW¼SW¼;
Section 29, NE¼NE¼, NE¼SE¼;
Section 33, lot 4, W½SW¼.
T. 44 N., R. 11 W.,
Section 3, Lots 6, 7, 8, SW¼;
Section 14, NW¼SW¼;
Section 22, SE¼SE¼;
Section 23, Lots 6, 8, NE¼NE¼;
Section 24, Lot 10;
Section 27, N½NE¼.
T. 43 N., R. 11 W.,
Section 6, NW¼.
T. 43 N., R. 12 W.,
Section 1, N½, NW¼SW¼, S½S½;
Section 2, N½;
Section 7, NE¼NE¼, SE¼SW¼;
Section 8, E½SW¼;
Section 18, NE¼NW¼.
T. 44 N., R. 12 W.,
Section 9, NW¼, S½NE¼, NE¼SE¼;
Section 10, W½SW¼;
Section 15, NW¼, SW¼NE¼, SE¼;
Section 16, E½NE¼;
Section 22, E½E½;
Section 27, N½NE¼, SE¼NE¼;
Section 35, E½NW¼, S½SW¼.

In exchange, the United States would acquire certain parcels of the following described private land from William Carstens:

T. 43 N., R. 10 W.,
Section 18, SE¼SE¼ (Tract 49);
Section 19, NW¼NE¼, E½E½;
Section 20, W½W½, SE¼NW¼, E½SW¼, SW¼SE¼;
Section 29, NW¼NE¼, SE¼SE¼;
Section 32, NE¼NE¼.
T. 43 N., R 12 W.,
Section 4, E½, N½NW¼, SE¼NW¼, NE¼SW¼;
Section 9, E½;
Section 10, NW¼, S½;
Section 12, W½, W½SE¼, SE¼SE¼;
Section 13, N½, N½SW¼;
Section 15, W½NW¼;
Section 16, E½W½.
T. 44 N., R. 12 W.,
Section 17, E½W½, W½E½;
Section 20, E½W½, W½E½;
Section 29, E½W½, W½E½, NE¼SW¼;
Section 32, W½NE¼, SE¼NE¼, NE¼SE¼;
Section 33, SW¼.

DATES: On or before January 22, 1990, interested parties may submit comments to the District Manager, Montrose District.

ADDRESSES: Submit comments to District Manager, Bureau of Land Management, Montrose District Office, 2465 South Townsend, Montrose, Colorado 81401.

FOR FURTHER INFORMATION CONTACT: Chuck Finch at the above address or phone (303)-249-7791.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to dispose of tracts of unaccessible public land and scattered public lands identified for disposal in the Bureau planning document, and acquire parcels of private land contiguous to larger blocks of public land. This will improve access, manageability and usability by the public. In addition the BLM will be acquiring approximately eight miles of riparian habitat along Beaver Creek and Saltado Creek. Land values will be equalized by acreage adjustments or by cash equalization payments following formal appraisal. Approximately 2100 acres of Federal minerals will be transferred with the surface. Conveyance of the public land will be subject to a reservation to the United States of a right-of-way for ditches and canals (Act of August 30, 1890), and all other existing rights including roads, and powerlines. Site specific information on rights-of-way is available at the Montrose District Office.

Any existing grazing leases on the public lands will be cancelled. Lessees not previously notified of cancellation will be allowed a two year period before cessation of grazing use unless such period is waived.

Publication of this notice segregates the public lands from settlement, sale, location, and entry under the public land laws, including the mining laws, except for exchange for a period of two years from publication of this notice.

Dated: December 1, 1989.

Alan Kesterke,

District Manager.

[FR Doc. 89-28601 Filed 12-6-89; 8:45 am]

BILLING CODE 4310-JB-M

[CA-010-00-4410-10]

Amendment to Notice of Intent To Prepare Bishop Resource Management Plan; Bakersfield District, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Scope of project expanded; Inyo National Forest will be a cooperating agency.

SUMMARY: Pursuant to 43 CFR 1610.2(c) and 40 CFR 1501.7 and 1508.5, our previous notice (page 24153 of the June 27, 1988, FR) is hereby amended to expand the scope of the utility corridor portion of the resource management plan (RMP), to include portions of the Inyo National Forest and to include the USDA Forest Service, Inyo National Forest as a cooperating agency for the utility corridor aspects of the RMP and associated EIS.

Both the BLM and the Forest Service invite comments and suggestions on the issues to be addressed in the expanded corridor study.

DATES: Comments on the issues and scope of the corridor analysis should be received before December 31, 1989. Comments submitted after that date will be considered to the extent feasible.

ADDRESSES: Submit written comments and suggestions concerning the corridor analysis to Dennis Martin, Forest Supervisor, Inyo National Forest, 873 North Main Street, Bishop, California

93514 or Mike Ferguson, Area Manager, Bureau of Land Management, 787 North Main Street, Suite P, Bishop, California 93514.

FOR FURTHER INFORMATION CONTACT: Heather Harvey, Planner, Inyo National Forest, Bishop, California, phone 619–873–5841; or Holden Brink, Resource Management Plan Team Leader, Bishop Resource Area, Bishop, California, phone 619–872–4881.

SUPPLEMENTARY INFORMATION: The Inyo National Forest Land and Resource Management Plan was approved in August 1988. The Plan directs the Forest to participate in an Eastern Sierra Interagency Utility Corridor Study to identify an east/west corridor.

The Bishop Resource Area is currently developing their Resource Management Plan and the utility corridor study will be included in the EIS for the plan.

This study is being conducted jointly because of the need for a consistent analysis between both agencies to ensure that any designated corridor will be acceptable to both.

The agencies will identify and consider a range of alternatives. One of these will be the designation of no utility corridors.

Dated: November 27, 1989.

Robert D. Rheiner, Jr.,

District Manager.

[FR Doc. 89–28577 filed 12–6–89; 8:45 am]

BILLING CODE 4310–40–M

[ID–942–00–4730–12]

Idaho: Filing of Plats of Survey

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 10:00 a.m., November 29, 1989.

The plat representing the dependent resurvey of portions of the south, east, and west boundaries, and subdivisional lines; the subdivision of certain sections, the survey of lot 6 in section 4, and lots 1 and 4 in section 9, T. 9 S., R. 13 E., Boise Meridian, Idaho, Group No. 692, was accepted November 22, 1989.

This survey was executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: November 29, 1989.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 89–28583 Filed 12–6–89; 8:45 am]

BILLING CODE 4310–66–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearings of the Judicial Conference Advisory Committee on Civil Rules

AGENCY: Judicial Conference of the United States.

ACTION: Notice of hearings.

SUMMARY: The Advisory Committee on Civil Rules has proposed amendments to the Federal Rules of Civil Procedure. The proposed rules amendments are: 4, New Rules 4.1, 5, 12, 14, 15, 16, 24, 26, 28, 30, 34, 35, 38, 41, 44, 45, 47, 48, 50, 52, 53, 56, 63, 72, 77, New Forms 1–A, and 1–B, Form 18 A, and Proposed Amendments to the Supplemental Rules for Certain Admiralty and Maritime Claims, Rule C, Rule E.

In order that persons and organizations wishing to do so may comment orally on the proposed rules, hearings on them will be held at the United States Courthouse in San Francisco, California on January 9, 1990, and at the United States Courthouse in Chicago, Illinois on February 2, 1990.

Those interested in obtaining copies of the proposed amendments or in presenting oral comments at the hearings, should write to James E. Macklin, Jr., Secretary, Committee on Rules of Practice and Procedure, Washington, DC 20544, no later than December 22, 1989, for the hearings in January in San Francisco, and January 12, 1990, for the hearings in February in Chicago.

Dated: November 30, 1989.

James E. Macklin, Jr.,

Secretary, Committee on Rules of Practice and Procedure.

[FR Doc. 89–28604 Filed 12–6–89; 8:45 am]

BILLING CODE 2210–01–M

Hearings of the Judicial Conference Advisory Committee on Bankruptcy Rules

AGENCY: Judicial Conference of the United States.

ACTION: Notice of hearings.

SUMMARY: The Advisory Committee on Bankruptcy Rules has proposed amendments to the Bankruptcy Rules. The proposed rules amendments, are: 1002, 1007, 1017, 1019, 2003, 2007, 2007.1, 2011, 2013, 2014, 2015, 2020, 3001, 3002, 3016, 3018, 4001, 4007, 5002, 5009, 6003, 7062, 8002, 9027, 9034, 9035, and Part X.

In order that persons and organizations wishing to do so may comment orally on the proposed rules, hearings on them will be held at the United States Courthouse in San Francisco, California on January 18, 1990, the National Courts Building in Washington, DC, on February 1, 1990, and the United States Courthouse on February 15, 1990, in Dallas, Texas.

Those interested in obtaining copies of the proposed amendments or in presenting oral comments at the hearings, should write to James E. Macklin, Jr., Secretary, Committee on Rules of Practice and Procedure, Washington, DC 20544, no later than December 29, 1989, for the hearings in January in San Francisco, and January 15, 1990, for the hearings in Washington, DC, and February 1, 1990, for the hearings in Dallas, TX.

Dated: November 30, 1990.

James E. Macklin, Jr.,

Secretary, Committee on Rules of Practice and Procedure.

[FR Doc. 89–28605 Filed 12–6–89; 8:45 am]

BILLING CODE 2210–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 89–51]

John F. Horvat, M.D.; Denial of Application

On June 16, 1989, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to John F. Horvat, M.D., (Respondent) of 1728 Jonathan Street, Suite 204, Allentown, Pennsylvania 18104, proposing to deny his application, executed on July 11, 1988, for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's registration would be inconsistent with the public interest.

Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On August 3, 1989, the Government filed a Motion for Summary Disposition alleging that Respondent was not currently authorized to handle controlled substances in the Commonwealth of Pennsylvania. Respondent filed a response to the Government's motion. On October 4, 1989, Judge Bittner issued her opinion and recommended ruling. No exceptions were filed, and on November 15, 1989, Judge Bittner transmitted the record of these proceedings to the Administrator. The Administrator has considered the record in its entirety and pursuant to 21

CFR 1316.67, hereby issues his final order in this matter.

The Administrative Law Judge found that on February 16, 1989, the Commonwealth of Pennsylvania, Department of State, Bureau of Professional and Occupational Affairs, State Board of Medicine, automatically suspended Respondent's license to practice medicine and surgery. Therefore, Respondent is currently without authorization to handle controlled substances in Pennsylvania. Respondent, in his response to the motion for summary disposition, did not deny that his state license to practice medicine had been suspended. Rather, Respondent argued that he has appealed the automatic suspension of his license to practice medicine and surgery, that he believes that he will prevail in this appeal, and that under these circumstances a summary disposition is inappropriate at this time.

The Administrator and his predecessors have consistently held that DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances. 21 U.S.C. 823(f). See, *Wingfield Drugs, Inc.*, Docket No. 87–13, 52 FR 27070 (1987); *Robert F. Witek, D.D.S.*, Docket No. 87–54, 52 FR 47770 (1987); and *Bobby Watts, M.D.*, Docket No. 87–71, 53 Fed. Reg. 11919 (1988). Judge Bittner concluded that it is clear that Respondent is not currently licensed to practice medicine or authorized to handle controlled substances in Pennsylvania, and as a result of Respondent's lack of this state authority, he is not currently entitled to a DEA registration.

The Administrative Law Judge further found that there was no merit to Respondent's contention that summary disposition would be inappropriate at this time. An application for a DEA registration may be denied where the applicant's state license or registration has been suspended, and it does not matter whether or not the state action is final or on appeal. See, *Robert F. Witek, D.D.S, supra.*

Finally, Judge Bittner concluded that the motion for summary disposition was properly entertained and must be granted. When no fact question is involved, or when the facts are agreed, there is no requirement that an agency convene a plenary, adversarial administrative proceeding, even though the pertinent statute prescribes a hearing. Congress does not intend administrative agencies to perform meaningless tasks. See, *United States* v. *Consolidated Mines and Smelting Co., Ltd.*, 445 F.2d 432, 453 (9th Cir. 1971); *NLRB* v. *International Association of Bridge, Stuctural and Ornamental Ironworkers, AFL–CIO*, 549 F.2d 634 (9th Cir. 1977).

The Administrator hereby adopts the opinion and recommended decision of the Administrative Law Judge. The Administrator concludes that Respondent's application for a DEA registration should be denied due to his lack of authorization to handle controlled substances in the Commonwealth of Pennsylvania. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 21 CFR 0.100(b), orders that the application for a DEA Certificate of Registration executed by Respondent on July 11, 1988, and any other pending applications submitted by Respondent be, and they hereby are, denied. This order is effective December 7, 1989.

Dated: November 29, 1989.

John C. Lawn,

Administrator.

[FR Doc. 89–28526 Filed 12–6–89; 845 am]

BILLING CODE 4410–09–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–27484; File No. SR–MSRB–89–12]

Self-Regulatory Organization; Proposed Rule Change by the Municipal Securities Rulemaking Board; Relating to Supervision and Preservation of Records

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 16, 1989, the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing amendments to Board rules G–27 on supervision and G–9 on preservation of records (hereafter referred to as "the proposed rule change"). The proposed rule change will provide more specific guidance in rule G–27 as to the supervisory responsibilities of dealers and clarify rule G–9 as it applies to rule G–27. The Board requests that the Commission delay the effectiveness of the proposed rule change for a period of six months following the date of Commission approval in order to provide dealers an opportunity to review their procedures to ensure compliance with the proposed rule change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Rule G–27 on supervision requires a dealer to supervise the municipal securities activities of its associated persons and the conduct of its business. It specifies that one or more municipal securities principals must be designated to supervise the dealer and also requires a dealer to have and enforce written supervisory procedures. Rule G–27 places responsibility for ensuring compliance with Board and other rules directly on the dealer. This provides important customer protections and ensures the confinued integrity of the municipal securities market. The Board has reviewed the requirements of rule G–27 and determined that the proposed rule change provides more specific guidance as to the supervisory responsibilities of municipal securities dealers. The proposed rule change also clarifies rule G–9 on the retention of records as it applies to rule G–27.

The proposed rule change to rule G–27 will require a dealer to establish an effective supervisory system that has three major components: (i) The specific designation of each principal, including his area of supervisory responsibility; (ii) the adoption and maintenance of detailed written supervisory procedures designed to ensure that a dealer's business and the municipal securities activities of its associated persons are in compliance with Board and other applicable rules; and (iii) at least an

annual review of its supervisory system and written procedures to ensure that they are adequate and up-to-date and to determine whether the dealer is in compliance with Board and other applicable rules. These requirements are consistent with the practices of many dealers who have established effective supervisory systems and with the supervisory requirements of other self-regulatory organizations.

Section (a)

Section (a) of the rule would be amended to reiterate a dealer's essential obligation to supervise the conduct of its municipal securities business and the municipal securities activities of its associated persons. The duty of a dealer to supervise its own securities activities is well settled under the federal securities laws and under the shingle theory.

Section (b)

All supervision must be effected through and by a qualified principal. Rule G–27 permits considerable flexibility, subject to certain minimum numerical requirements specified in rule G–3(b), on standards of professional qualification, to delegate supervisory responsibility to one or more principals in a manner that best serves the administrative and other practical concerns of a dealer.

Section (b) of the rule would be amended to simply restate, in a more organized fashion, which category of principal may discharge various supervisory responsibilities. In general, supervisory responsibilities for the municipal securities activities of a dealer must rest with a qualified municipal securities principal. However, rule G–27(b) specifies a number of supervisory responsibilities that also may be performed by municipal securities sales principals, by general securities principals, and by financial and operations principals. In addition, this section provides that a dealer that is not a bank dealer or an introducing broker must appoint at least one financial and operations principal to discharge SEC financial reporting and customer protection requirements and to be principally responsible for the books and records of the dealer; the chief financial officer of such a dealer must be a financial and operations principal. An introducing broker may appoint either a financial and operations principal or a municipal securities principal to supervise its books and records or act as the chief financial officer.

A written record of the name of each designated principal and of his supervisory responsibilities must be maintained for six years as required in rule G–9 and the dealer's records must be updated as changes occur. It should be emphasized that nothing in the proposed rule change alters the long-standing position of the Board that a principal designated as responsible for supervising the municipal activities of a branch office or unit need not be physically located there as long as the supervisor effectively can supervise the associated persons and activities of the branch office or unit from his different location.

Section (c)

One of the principal provisions of rule G–27 has been the requirement that a dealer establish written supervisory procedures to assure compliance with Board and other applicable rules. This ensures that designated principals are informed about the scope of their duties and permits the dealer to oversee its principals' activities. Section (c) of the rule would be amended to provide additional guidance as to what matters should be covered in written supervisory procedures. The Board anticipates that supervisory procedures will cover all supervisory activities permitted of principals under rule G–3. In addition, section (c) would specifically require written supervisory procedures to provide for the periodic review of each office in which municipal securities activities occur, including branch offices or units. Among other things, the section would anticipate that the written supervisory procedures specifically will address Board rules and how supervision will occur. For example, paragraph (c)(iii) of the amended rule would require the regular and frequent review and approval by a designated principal of customer accounts in which transactions occur. The purpose of this requirement, which is contained in current rule G–27, is to detect and prevent irregularities and abuses. The Board expects dealers to establish procedures that effectively obtain this objective and are capable of compliance. Thus, in determining when an account must be reviewed, a dealer might look to the volume and frequency of trading and the nature of the securities traded. Such guidelines would be appropriate if they are articulated clearly in a dealer's written supervisory procedures.

Section (d)

Section (d) of the amended rule would require a dealer to revive and update its supervisory procedures when necessary to respond to changes in Board or other applicable rules, administrative changes at the dealer, and other relevant developments. The intent of the Board is to ensure that a dealer is aware of current regulatory developments and will educate its supervisors and associated persons in all applicable requirements to ensure compliance.

The proposed rule change also clarifies a dealer's obligation to evaluate its compliance with Board and other applicable rules at least annually. The proposed rule change permits a dealer to develop its own procedures for evaluation compliance. For example, some dealers may require principals to report on compliance issues periodically or to submit written compliance reports summarizing activities under their particular supervision. In addition, a dealer must be satisfied that its designated principals are following their respective written supervisory procedures. This can be accomplished by ensuring that a designated principal keep notes sufficient to permit adequate oversight by the dealer.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board believes that the proposed rule change will not have any impact on competition since it applies equally to all municipal securities brokers and dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Board solicited comments on the proposed rule change in an exposure draft published in August 1989. The Board received one comment letter on the exposure draft. The commentator did not specifically address the proposed rule amendments but requested that the Board of the National Association of Securities Dealers, Inc. ("NASD") make a form of supervisory procedures available to firms so that they may more easily comply with the requirement for written supervisory procedures. The Board has not developed such a form because of the differences in how securities firms and bank dealers arrange their supervisory structure and how they ensure compliance with Board rules. The Board's staff contacted the NASD for its reaction to this suggestion. The NASD noted that it also has not prepared a form of procedures for dealers because of the differences in compliance procedures. The NASD stated that its examiners are willing to comment on the adequacy of written supervisory procedures but firms must determine their own method for compliance.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 28, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 29, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-28539 Filed 12-6-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27488; File No. SR-MSRB-89-9]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to the Delivery of Official Statements and Recordkeeping

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 13, 1989, the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change as described in items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing proposed rule G-36 regarding the delivery of official statements and other information to the Board or its designee, proposed amendments to rule G-8 on recordkeeping and proposed Form G-36 (hereafter "the proposed rule change"). The Board requests that the Commission delay the effectiveness of the proposed rule change for a period of 30 days following the date of approval in order to allow dealers time to develop procedures to comply with the new requirements. The proposed rule change would require underwriters to send to the Board copies of official statements and certain other information for certain new issue municipal securities for inclusion in the Board's planned central electronic repository.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The complexities of municipal securities (*e.g.*, complex extraordinary and other call features, put options and variable and/or convertible interest rates) make it essential that professionals and investors have access to complete and timely descriptive information about municipal securities and municipal securities issuers. Such information generally is available in official statements for new issue municipal securities. The Board has been concerned, however, that the flow of information in the new issue market has not been adequate to ensure that market participants have access to the official statement for a new issue at the time trading begins in the issue. In addition, in the secondary market, it appears that dealers that need descriptive information for issues they are trading usually do not have access to the official statements that contain the information. The Board believes that these information problems can be ameliorated by the creation of a repository for official statements and other documents.

Proposed Rule G-36

The Board plans to create a repository that would function much like a public library that stores and indexes the documents and provides copies of the documents to parties requesting them for a fee. In furtherance of that goal, the Board adopted the proposed rule change. Rule G-36(b) would require underwriters of issues subject to Securities Exchange Act rule 15c2-12 to provide to the Board or its designee a copy of the final official statement and a completed Form G-36 which includes CUSIP numbers for these issues to permit the information to be indexed by CUSIP number. In addition, rule G-36(c) would require underwriters of certain issues not subject to rule 15c2-12 to send to the Board a copy of the official statement in final form if prepared by or on behalf of the issuer, along with a completed Form G-36. These issues include those less than $1 million, but not those qualified for the exemption set forth in rule 15c2-12(c), regardless of the amount of the issue (*e.g.*, certain privately-placed and short-term issues). Official statements for issues exempt from rule 15c2-12 pursuant to section (c) would not be required to be sent to the repository because the Board believes that such documents may not be very useful to repository customers. Privately-placed securities probably will not be heavily traded in the secondary market and short-term issues will mature soon after the official statement is placed in the repository. The Board, of course, will accept any of these official statements if provided voluntarily to the repository, along with a completed Form G-36.

The official statements must be sent, by certified or registered mail, or some other equally prompt means that provides a record of sending, within one business day of receipt from the issuer for issues subject to rule 15c2-12 but no later than 10 business days after the date of the final agreement to purchase, offer or sell the municipal securities, and within one business day of closing for other issues. The latter requirement ensures that the Board is not inserting itself into the official statement preparation process—but recognizes that if final official statements are prepared, they should be done by closing.

In addition, rule G-36(d) would require underwriters to send to the Board amended or "stickered" official

statements if the issuer provides the amendment during the underwriting period. Underwriters also must provide a statement including the CUSIP number or numbers for the issue, the fact that official statements previously had been sent to the Board and that the official statement has been amended.

Rule G–36(e) would provide that, if an issue is cancelled after documents are provided to the Board or its designee, the underwriter must notify the Board promptly, in writing, of this fact. Through this provision the Board would ensure that the repository does not collect and disseminate documents for cancelled issues. If a syndicate is formed for the underwriting of the issue, rule G–36(f) would require the managing underwriter to take the actions required under draft rule G–36. Finally, rule G–36(g) would require that, within 60 days of the effective date of the rule, underwriters deliver the documents and written information referred to in rule G–36 for each offering of municipal securities from the effective date of SEC rule 15c2–12 (January 1, 1990) to the effective date of draft rule G–36.

Proposed Amendments to Rule G–8

The proposed rule change also would require the underwriter to keep a record of the name, par amount and CUSIP number or numbers of all issues subject to rule G–36, along with the dates that the documents and written information referred to in rule G–36 are received from the issuer and are sent to the Board or its designee and, for issues subject to rule 15c2–12, the date of the final agreement to purchase, offer, or sell the municipal securities. The proposed rule change is designed to assist in ensuring compliance with certain of the requirements of SEC rule 15c2–12 and Board rule G–36.

The Board has adopted the proposed rule change pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended, which authorizes the Board to adopt rules designed to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating transactions in municipal securities and, in general, to protect investors and the public interest. An official statement repository will significantly increase the scope of information concerning municipal securities made available to the general public and market participants in furtherance of the Board's rulemaking purposes. In addition, a repository would allow the Board to consider possible rulemaking initiatives to ensure that customers have complete information regarding municipal securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change would impose any burden on competition since it applies equally to all brokers, dealers and municipal securities dealers. In addition, the Board realizes that information vendors may wish to disseminate information acquired from the repository. The Board believes that the creation of a central repository will not impose any burden on competition among such information vendors or between the Board and such vendors because, as noted by the Board in its "Guiding Principles for a Central Electronic Repository," the Board will operate the repository in a manner that: (1) Will provide equal access to documents to any person; (2) will not confer special or unfair economic benefit to any person; and (3) will encourage and facilitate the development of information dissemination services by private vendors.[1] The Board wishes to emphasize that official statements are public documents that are now and will continue to be available, upon request, through a number of channels, such as issuers and underwriters.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

In August 1989, the Board published for comment draft rule G–36 and draft amendments to rule G–8. The Board received 10 comments in response to the draft rule.

In general, most of the commentators support the concept of a central repository for official statements operated by the Board. One commentator suggests that the Board consider a completely voluntary repository, and one commentator believes the Board should not develop a repository. The comments on specific provisions of the rule are summarized and discussed below.

[1] The Commission is concerned that the proposed rule change may competitively disadvantage those information vendors interested in becoming a Nationally Recognized Municipal Securities Information Repository or "NRMSIR," and therefore requests that commentators address whether the proposal would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Commentators are also asked to consider whether the Commission should, if so requested, designate the Board a NRMSIR if proposed rule G–36 is approved and in effect. *See* page 23, below.

1. Draft Rule G–36—(a) What Issues Should be Subject to Draft Rule G–36

Four commentators state that the Board should make the rule applicable to all issues, not just those subject to SEC rule 15c2–12, if official statements are made available by the issuer. One commentator notes that this should ensure that disclosure documentation is available in the repository for as many issues as possible. One commentator states that such a requirement would make the rule parallel with rule G–32, which requires dealers to deliver final official statements to new issue customers for all issues for which a final official statement is prepared by the issuer. One commentator adds that the Board should consider the cost impact on small underwriters of such a requirement.

Three commentators, however, state that the Board should limit application of draft rule G–36 to issues subject to SEC rule 15c2–12. One states that the delivery requirements under draft rule G–36 and SEC rule 15c2–12 should parallel one another. Another notes that "final official statement" is a defined term in SEC rule 15c2–12 and that making draft rule G–36 apply to issues not subject to rule 15c2–12 would require underwriters to judge whether what they have received from the issuer is a "final official statement." It states that the SEC decided not to place such a burden on underwriters and suggests that the Board allow underwriters to send such documents to the Board voluntarily.

The Board has determined to extend the rule to certain issues not subject to SEC rule 15c2–12, *i.e.*, certain issues of less than $1 million. The Board believes it would be beneficial to have those official statements in the repository. The rule will not be extended to other issues exempt from rule 15c2–12 (*i.e.*, certain private placements and short-term issues, whether above or below the $1 million threshold) because such documentation may not be very useful to repository customers. Privately-placed securities probably will not be heavily traded in the secondary market and short-term issues will mature soon after the official statement is placed in the repository. Official statements for issues not subject to rule G–36 may be provided voluntarily to the repository, along with a completed Form G–36.

(b) What Documents Should be Delivered—(i) Refunding Documents

While there is consensus that final official statements should be delivered to the Board, three commentators state

that there are problems with the requirement to deliver refunding documents. One states that the definition of refunding documents in the draft rule is vague and unnecessarily broad and places an unwarranted burden on underwriters, as well as the users of a central repository, because it could include a number of lengthy documents (*e.g.*, bond ordinance, legal opinion, escrow agreement, and arbitrage certificate) that the Board does not really want in its repository and that customers of the repository will not use. It notes that information regarding the escrow and scheduled redemptions of refunded bonds typically is available in a notice of defeasance and notice of call and that the rule should be revised to require the filing only of these documents for refunded issues. It also suggests that the delivery requirement be delayed until closing of the issue because of the changes in the documents that can occur up until that time.

Another commentator asks that the Board delete the mandatory filing requirement of refunding documents and make it voluntary because, with such a requirement, the Board appears to be extending itself beyond the scope of information within the underwriter's control. It notes that refunding documents are not required to be provided to underwriters under rule 15c2–12, and, if accessible to the underwriter, may only be so by closing. It also notes that refunding documents are often incomplete without reference to the documents of the refunded issue—which documentation would not necessarily be available in the repository.

Since its December 1987 letter to the SEC suggesting the establishment of a central electronic repository, the Board has stated that refunding documents should be included in the repository because of the importance of such information to the purchase and sale of the refunded issue. However, certain commentators on this issue were concerned about the definition of refunding documents and the timing of delivery. While the Board believes the timing problem could be resolved by moving delivery back to the issue's closing, the definitional problem remains. One commentator notes that the mass quantity of paper that is included in the current definition of refunding documents is unnecessary—only a notice of defeasance and notice of call are necessary. It is clear, however, that not all notices of defeasance set forth the necessary information. In addition, since a refunding does not negate the refunded issue's indenture, it may be important to refer back to that document as well. In fact, it might be useful to require dealers to deliver a copy of the official statement for the refunded issue, along with the other refunding documents, to ensure that repository users have as complete a picture as possible of the refunded issue.

Because few of the commentators focused on the definition of refunding documents and the Board wants to ensure that it receives useful information on refunded issues, without also receiving unnecessary documents, the sections of the rule dealing with delivery of refunding documents have been deleted at this time. However, because of the importance of including such information in the repository, revised provisions along the lines discussed above will be published for additional industry comment.

(ii) "Stickered" Official Statements

Six commentators agree that draft rule G–36 should apply to stickered official statements if the issuer provides the information during the underwriting period. One notes that if certain information is sufficiently material to require an amendment to the official statement, that information should be available to all investors, including those relying on the central repository. Another suggests that the filing requirement for stickered official statements be delayed until three business days after receipt of the information from the issuer.

In response to these comments, the Board has added a new section (d) to draft rule G–36 to require dealers to deliver to the Board by certified or registered mail, or some other equally prompt means that provides a record of sending, within one business day of receipt from the issuer, amended or "stickered" official statements, if prepared by the issuer during the underwriting period. Dealers also must provide a statement including the CUSIP number or numbers for the issue, the fact that the official statement previously had been sent to the Board and that the official statement has been amended.

(c) Where Should the Documents be Delivered

One commentator asks that the Board revise the draft rule to require dealers to send the required documents to the Board and any Nationally Recognized Municipal Securities Information Repository ("NRMSIR"). It states that it should not be unduly burdensome for underwriters to provide such documents since the number of NRMSIR applicants does not appear to be great. In addition, it notes that having the documents delivered to the Board and the NRMSIRs ensures that each NRMSIR has a complete set of all official statements and refunding documents without a requirement for an electronic linkage between the NRMSIRs and the Board.

One commentator states that, once the Board receives NRMSIR status, it is not clear whether other entities will apply for such status. It adds, however, that other entities are free to establish repositories with services that may be needed by the underwriting community (*e.g.*, production of copies of official statements in bulk) and that underwriters would readily forward disclosure documents to these entities. Another commentator notes that underwriters should not be required to provide documents for free to more than one repository because repositories sell such information.

There seems to be a misconception, at least on the part of one commentator, about the function of the Board's repository. The Board's repository will be the "public library" for official statements that will not only collect and disseminate the information for one or two months after the underwriting period, but also will retain the information for the life of the issue and for a certain period beyond. Its main functions are to be the permanent base for historical information on municipal securities and the central location for dissemination of more current municipal securities documents to assist the functioning of the municipal securities market and facilitate Board rulemaking.

In regard to the commentator's specific comment that draft rule G–36 be revised to require dealers to send copies of official statements to the Board and all NRMSIRs, the Board decided against making such a change. It is unclear how many organizations will apply for NRMSIR status—particularly if the Board provides them, by rule, with the right to receive free official statements for all new issues. The Board believes it would be onerous to put such an open-ended burden on the dealer community. In addition, it is not clear how dealers can be kept apprised of which entities have acquired NRMSIR status and how the enforcement agencies (*i.e.*, NASD and banking agencies) could inspect for compliance with such a rule.

The Board also believes that it is inappropriate to write rules that benefit certain private, profit-making ventures. In addition, the Board does not believe it would be fair to mandate that certain information disseminators (*i.e.*, NRMSIRs) receive free documents while

other information disseminators do not—only because they did not apply for NRMSIR status. Once the Board's repository is operational, the Board will provide information to any party, including NRMSIRs, which requests it. The Board expects that the pricing of documents in the repository will take into account the difference between single document requests and multi-document requests which can be handled less expensively (*i.e.*, in "bulk"). Any organization that provides a useful service to dealers should be able to obtain official statements voluntarily from dealers. The Board will urge dealers to send official statements to NRMSIRs and other information vendors prior to and after the Board's repository begins operation.

(d) When Should the Documents for Issues Subject to SEC Rule 15c2-12 be Delivered—(i) Delivery Within One Business Day of Receipt from Issuer

A number of commentators question the portion of the draft rule requiring, for issues subject to SEC rule I5c2–12, delivery of the required documents to the Board within one business day after receipt of the final official statement from the issuer. Five commentators suggest that the Board change the requirement to "send" within one business day by first class mail. This would allow the required documents to reach the Board quickly, but not require dealers to pay for an overnight delivery service. Since rule 15c2–12 requires underwriters to deliver official statements to potential customers for at least 25 days after the end of the underwriting period, one commentator notes that Board receipt of official statements a day or two later will not affect the availability of official statements to investors. One also notes that rule 15c2–22 has a "send within one business day" official statement delivery requirement as well.

The proposed rule change was revised to require dealers to send the official statement to the Board within one business day of receipt from the issuer by certified or registered mail, or some other equally prompt means that provides a record of sending (*e.g.*, by messenger, overnight delivery service, etc.). While this one to two day delay could be a problem for repository customers that need the documents quickly, the Board believes that the proposed revision is a helpful compromise. The requirement for some kind of receipt should assist dealers in keeping certain records regarding compliance with the rule, as required by the draft amendments to rule G–8.

(ii) Delivery No Later Than Eight Business Days After Concluding Any Final Agreement to Purchase the Issue

Two commentators state that the eight business day limit in the rule would be a burden on dealers and result in technical violations of rule G–36 if the issuer or its agent fails to meet its contractual obligation under rule 15c2–12 to provide a final official statement to the underwriter within seven business days of the date of the final agreement to purchase, offer, or sell the municipal securities. One notes that the timeframe for delivery of a final official statement to potential customers under rule 15c2–12 runs from the time the final official statement "becomes available," not the contractual delivery date. It notes that, by doing this, the SEC avoided raising technical issues of noncompliance due to force majeure and contractual enforcement issues and achieved the overall purpose of delivering the final official statement to the marketplace.

If the issuer fails to comply with its contractual delivery requirement, a dealer would not be able to comply with draft rule G–36. The Board believes that dealers should not be subject to a rule violation for something outside of their control; however, it is important that issuers and underwriters do everything possible to ensure that the issuer is able to comply with its contractual requirement to provide final official statements in a timely fashion. The Board revised this provision to require dealers to send the official statement no later than 10 business days from the date of the final agreement to purchase the securities. Changing the "delivery no later than eight business days" requirement to "send no later than 10 business days" gives dealers an additional three business days past the contractual delivery date to send the official statement before any violation of rule G–36 occurs. While the possibility exists that the issuer will not be able to comply with its contractual obligation, the Board believes that underwriters should do everything possible to ensure issuer compliance.

(iii) Cancelled Issues

In regard to sending the Board information about cancelled issues, two commentators state that the requirement is a good one and one commentator adds that the information could be provided to the Board within five business days of cancellation. The "promptly" standard in the draft rule remains.

(iv) Issues From January 1, 1990

One commentator is opposed to the requirement that underwriters provide copies of official statements from January 1 to the effective date of rule G–36 because of the administrative burdens and costs for underwriters. The provision remains because the burden on dealers should not be great since the Board expects the rule to become effective early in 1990. The Board also plans to accept voluntary delivery of official statements prior to the rule's effective date.

2. Draft Amendments to Rule G–8

Two commentators agree that the draft amendments to rule G–8 would be helpful to ensure compliance with rule G–36. In response to the Board's question whether any further recordkeeping requirements to ensure compliance with SEC rule 15c2–12 should be added, two commentators state their opposition to any such requirement because they believe underwriters should be able to develop their own method of compliance and not be chilled by being required to record certain items under the Board's rules.

The proposed rule change was revised to require dealers to keep records regarding compliance with draft rule G–36, including the new provisions regarding issues not subject to rule 15c2–12 and stickered official statements. While the Board has the authority to adopt extensive recordkeeping requirements to ensure compliance with rule 15c2–12, the Board added only one item to the draft amendments to rule G–8 at this time—the date of the final agreement to purchase the issue. This will allow enforcement agencies to review the timing of the delivery of official statements by issuers or their agents to underwriters and the subsequent sending of the official statements to the Board. If, over time, compliance procedures with SEC rule 15c2–12 seem to be lacking, the Board could consider whether additional rulemaking is necessary.

3. Miscellaneous—(i) Liability

One commentator states that additional legal responsibility for the contents of a document should not arise solely by the transmittal of that document to a central repository. It suggests that the Board not disseminate official statements until the SEC adopts a safe harbor for underwriters that submit information to the repository to ensure that there will be no additional liability. In addition, it would like clarification that neither the Board,

underwriters nor issuers have a duty to update the information in the repository, apart from the requirements in rule G–36 regarding stickered official statements and cancelled issues. The SEC staff is aware of the commentator's concerns.

(ii) Trustee Information

Two commentators ask the Board to consider widening the scope of information available in the repository to include trustee disclosure information. This suggestion will be reviewed by the Board as repository plans proceed. Of course, the Board does not have the authority to require trustees to submit any documents to the Board.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

The Commission specifically requests comment on whether the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, including sections 15B and 23 thereunder.[2] The Commission would also like commentators to address whether it should, if so requested, designate the Board a Nationally Recognized Municipal Securities Information Repository or "NRMSIR" if proposed rule G–36 is approved and in effect.

Interested people are invited to submit written data, views and arguments concerning the foregoing. People making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequest amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 28, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 30, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–28593 Filed 12–6–89; 8:45 am]

BILLING CODE 8010–01–M

[2] Section 23(a)(2) of the Act requires the Commission, in adopting rules under the Act, to consider the anti-competitive effects of such regulation and to balance any anti-competitive impact against the regulatory benefits gained in furthering the purposes of the Act.

[Release No. 34–27489; File No. SR–NASD–89–42]

Self-Regulatory Organizations; Notice of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Shareholder Approval of Certain Transactions for NASDAQ National Market System Issuers

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 18, 1989 the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change modifies existing part III 5(i) of Schedule D to the NASD By-Laws which requires shareholder approval of certain transactions by issuers of securities traded in the NASDAQ National Market System. The rule change alters from 25% to 20% the threshold at which shareholder approval of issuances of stock in connection with certain acquisitions is required. The rule change also makes other clarifications and modifications of the current rule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change amends part III of Schedule D to the NASD's By-Laws which relates to qualification standards for NASDAQ National Market System (NASDAQ/NMS) issuers and in particular section 5(i) which requires shareholder approval of certain issuances of securities. The proposed rule change responds in part, to a letter from the Division of Market Regulation dated September 5, 1989 to Joseph R. Hardiman, President of the NASD, as well as to a comment letter received by the Commission in response to the recent Schedule D amendment which added section 5(i) of part III to the Schedule.[1] When the Commission approved that rule filing, it noted that it was in the process of reviewing a New York Stock Exchange ("NYSE") filing that would amend the NYSE shareholder approval policy[2] and that the NASD had represented that, upon approval of the NYSE rule filing, it would consider making conforming changes to the NASD rule within a period of ninety days. The present proposed rule change is submitted pursuant to that representation.

The proposed rule change would require shareholder approval for certain

[1] *See* Securities Exchange Act Release No. 26433 (January 9, 1989), 54 FR 1463.

[2] *See* Securities Exchange Act Release No. 27035 (July 14, 1989), 54 FR 30490. The NYSE amendment requires shareholder approval for all issuances of 20% or more of an issuer's outstanding common shares, a reduction in the threshold from an earlier proposed level of 25%. In its September 5th letter, the Division stated "this change reflected the Commission's belief that a rise to 25% might frustrate the intent of the shareholder approval policy." The letter also stated the Division's belief that a similar analysis should apply to the shareholder approval requirements of each marketplace and requested the NASD to consider amending its rule to substitute the 20% threshold, and to consider other conforming changes with NYSE's amended policy.

issuances of 20% or more of an issuer's outstanding common shares. Specifically, such approval would be required in the context of an issuance for less than book or market value or in connection with the acquisition of another company. The NYSE rule requires shareholder approval when common shares are to be issued in any transaction and the 20% threshold is met. Section 1(c) of the NASD rule would require shareholder approval of the acquisition of the stock or assets of another company in two circumstances. The first is where an officer, director or substantial security holder of the issuer has a five percent or greater interest in the company or assets to be acquired, and the issuance could result in an increase in outstanding common shares or voting power of five percent or more. The second circumstance is where the issuance will be equal to 20% or more of the outstanding shares or voting power of the issuer.

Similarly, shareholder approval will be required for issuances of securities for less than the greater of book or market value (other than in the context of a public offering) if either (a) the issuance equals 20% of outstanding stock or (b) if a smaller issuance coupled with sales by the officers, directors or substantial security holders meets the 20% threshold. The NASD believes that the approach taken in the proposal with respect to acquisitions and other transactions strikes an appropriate balance between shareholder protection and burden upon issuers.

In addition, the proposed rule change clarifies the fact that, with respect to stock option plans, shareholder approval is required of the plan itself and not of each issuance of securities pursuant to the plan. It removes the reference to "key employees" and provides that the rule does not generally apply to broadly based plans or arrangements, or to issuances which are an inducement to initial employment with a company. The proposed rule change also establishes a *de minimis* exception to requiring shareholder approval with respect to option plans or arrangements where the securities which may be issued pursuant to the plan do not exceed the lesser of 1% of the number of shares/voting power outstanding or 25,000 shares. This exception is not contained in the NYSE rule.

The proposal also incorporates the NYSE exception to the shareholder approval requirement relating to distressed companies and, mirroring the NYSE rule, requires shareholder approval of the issuance of securities in connection with any transaction resulting in a change of control of the issuer. Definitional explanations of a substantial security holder and the term "voting power" are also provided in the proposal.

The NASD believes that the proposed rule change is consistent with section 15A(b)(6) of the Act which requires that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market, and in general to protect investors and the public interest. The NASD believes that the proposed rule protects investors and is consistent with the purposes of the Act in permitting participation in significant corporate events by those investors. The NASD also believes that the proposed rule change will help assure fair competition among market places and in general will serve to enhance the development of the National Market System mandated by Congress in that the standards will assure that issuers traded in the NASDAQ National Market System will meet non-quantitative criteria consistent with a national interest in those securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received. The proposed rule change, however, addresses the comment received by the Commission in response to its publication of the NASD's previous filing of SA–NASD–88–36.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days from the date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: November 30, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–28534 Filed 12–6–89; 8:45 am]

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[Release No. 34–27490; File No. SR–NASD–89–54]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Temporary Accelerated Approval to Proposed Rule Change Relating to Limit Order Capabilities of the Association's Small Order Execution System

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 29, 1989, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would extend until February 28, 1990 the Commission's temporary approval of the limit order capabilities of the NASD's Small Order Execution System ("SOES") that was approved for a ninety day period on January 19, 1989, and extended until November 30, 1989.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this filing is to extend the Commission's temporary approval of the SOES limit order system until February 28, 1990. This extension will allow the NASD to continue to monitor utilization of the system and will provide an opportunity for the Commission to consider the permanent approval of the limit order system with enhancements relative to crossing or matching of customer limit orders resident in the system. For a detailed description of the proposed limit order enhancements the Association will file an amendment to filing No. SR–NASD–89–9, requesting permanent approval of the SOES limit order file, in the near future.

The statutory basis for the further development and implementation of SOES is found in sections 11A(a)(1) (B) and (C)(i), 15A(b)(6) and 17A(a)(1) (B) and (C) of the Act. Sections 11A(a)(1) (B) and (C)(i) set forth the Congressional goal of achieving more efficient and effective market operations and the economically efficient execution of transactions through new data processing and communications techniques. Section 15A(b)(6) requires that the rules of the Association be designed to "foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market." Sections 17A(a)(1) (B) and (C) set forth the Congressional goal of reducing costs involved in the clearance and settlement process through new data processing and communications techniques. The NASD believes that the modifications to SOES will further these ends by providing enhanced mechanisms for the efficient and economic execution and clearance of limit orders in over-the-counter securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association does not anticipate that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received with respect to the proposed rule change contained in this filing.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find good cause pursuant to Section 19(b)(2) of the Act for approving the proposed rule change on a temporary basis prior to the thirtieth day after publication in the **Federal Register** and in any event before November 30, 1989, the date on which the temporary approval for the SOES Limit Order processing function expires. The Association believes that the enhancement to the SOES system is currently benefitting members and their public customers by providing an automated method of processing limit orders for all SOES participants that is comparable to proprietary systems now utilized by some member firms. In light of these factors, the NASD requests that the Commission approve this rule change on an accelerated basis. During the term of the extension, the Commission will have the opportunity to consider permanent approval of the system with enhancements relating to the crossing of limit orders entered between the spread while providing members and their customers with the ongoing advantage of the ability to use the SOES limit order function.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and, in particular, the requirements of sections 11A(a)(1)(B), 15A(b)(5) and 17A(a)(1) (B) and (C) and the rules and regulations thereunder. The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of the filing thereof in that accelerated approval will benefit public investors by continuing to provide limit order storage and execution capabilities which can result in more efficient handling of customer orders. The Commission believes that the benefits of extending the temporary rule change until February 28, 1990 outweigh any potential adverse effects during the period of the rule change's effectiveness.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by December 28, 1989.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: November 30, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–28535 Filed 12–6–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34-27480; [File No. SR-OCC-89-06]]

Self-Regulatory Organization; The Options Clearing Corporation Order Approving a Proposed Rule Change Increasing the Minimum Required Contribution to OCC's Clearing Fund and Allowing OCC to Charge Certain Losses and Deficiencies Against Retained Earnings

November 28, 1989.

On June 28, 1989, the Options Clearing Corporation ("OCC") filed a proposed rule change (File No. SR-OCC-89-06) pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule would increase the minimum required contribution to OCC's Stock Clearing Fund ("Stock Fund") and Non-Equity Securities Clearing Fund ("Non-Equity Fund") (collectively "Clearing Fund"). The proposed rule also gives OCC's Board of Directors ("Board") more flexibility in dealing with OCC's financial affairs. Notice of the proposed rule change appeared in the Federal Register on July 27, 1989.[2] No comments were received. This release approves OCC's proposed rule change.

I. Description of the Proposal

OCC's proposed rule change amends OCC's Rules by increasing a member's minimum required contribution to OCC's Clearing Fund. The proposal amends Rule 1001(a) [3] by increasing a member's minimum required contribution to the Stock Fund from $10,000 to $75,000. It also amends Rule 1001(b) [4] by increasing a member's minimum required contribution to the Non-Equity Fund from $50,000 to $75,000.

The proposal also amends OCC's By-laws by giving OCC's Board of Directors ("Board") more discretion in dealing with OCC's financial affairs. The proposal grants the Board the authority to increase a member's minimum required contribution to the Clearing Fund during the first three months of membership.[5] The proposal further allows OCC to charge any loss caused by a clearing member's default or a deficiency in a member's required clearing fund contribution against OCC's retained earnings.[6]

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] *See* Securities Exchange Act Release No. 27048 (July 20, 1989), 54 FR 31276.

[3] *See* OCC Rules ("Rules"), Chapter 10, Rule 1001(a).

[4] *See* Rules, Chapter 10, Rule 1001(b).

[5] *See* section III.B., *infra*.

[6] *See* section III.C., *infra*.

II. OCC's Rationale

OCC believes that the proposed rule change is consistent with section 17A of the Act [7] because it will provide additional financial integrity to OCC's guaranty of the clearance and settlement of exchange-traded options. OCC believes that its proposal will increase investor confidence by ensuring that OCC maintain an independent source of liquidity with sufficient funds to cover losses arising out of member default.

III. Discussion

A. Increase in Minimum Required Contribution to Clearing Fund

Section 17A of the Act provides that the rules of a clearing agency must, among other things, be designed to assure the safeguarding of funds and securities which are in the custody or control of the clearing agency or for which it is responsible. A clearing agency's rules must also be designed to protect investors and the public interest.[8] As explained in the Division of Market Regulation's standards for review of clearing agency registration applications ("Standards"),[9] one way to protect participants from risk is for clearing agencies to establish, by rule, an appropriate level of clearing fund contributions based, among other things, on an assessment of the risks to which they are subject.[10] OCC has reassessed the risks to which it is subject in light of the events of October, 1987 [11] and, based on that assessment, believes that increasing the minimum required contribution to the Clearing Fund is appropriate at this time.[12]

The Commission believes that OCC's decision to increase minimum required contribution to its Clearing Fund is appropriate and consistent with the Act.[13] OCC's minimum required contribution to its Stock Fund and Non-Equity Fund have remained constant since 1972 (the year of OCC's inception) and 1984 respectively. Since these dates, activity in OCC-issued stock and non-equity options has increased dramatically.

For example, volume for combined equity and non-equity options increased (on an average daily basis) 30% between 1985 and 1988.[14] In addition, average non-equity option premiums have increased over 50% between 1984 and 1988.[15]

The Commission also believes that raising OCC's minimum required contribution to the Stock Fund will better protect OCC from any realistic exposure inherent in options trading.[16] For example, OCC's minimum required contribution to the Stock Fund ($10,000) has not been increased since OCC's formation in 1972. Thus, because of the effects of inflation, this amount no longer provides OCC with the same degree of coverage that it initially provided.

[7] 15 U.S.C. 78q-1 (1982).

[8] *See* 15 U.S.C. 78q-1(b)(3)(F) (1982).

[9] *See* Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920.

[10] *Id.* at 41929.

[11] On October 19, 1987, OCC, among others, was monitoring the financial condition of one of its clearing members, Shaine, because of its difficulty in meeting settlement obligations and its high risk exposure in uncovered S&P 100 put options. Because of the dramatic decrease in the price of such options on October 19, Shaine was unable to meet its margin calls on that day. Consequently, on October 20, Shaine was placed in liquidation. OCC converted Shaine's margin and clearing fund deposits to cash, netted out Shaine's open positions, and closed out Shaine's netted positions by the end of the day. OCC sustained an $8.5 million loss on the liquidation and allocated such loss pro-rata among OCC's clearing members. This was the first time that OCC's members had been assessed pro-rata for losses caused by a clearing member's default.

Because almost all of Shaine's positions were in non-equity options, 99.25% of the loss was charged to the Non-Equity Fund and 0.75% was charged to the Stock Fund. *See The October 1987 Market Break*, Report by the Division of Market Regulation, United States Securities and Exchange Commission, at 10-45, (February, 1988) ("Market Break Report").

[12] On August 31, 1988, a subcommittee of OCC's margin committee issued a report to OCC's Board of Directors analyzing various aspects of OCC's risk management policies and procedures. ("Backup System Report"). The subcommittee recommended that in view of the events of October, 1987, the minimum required contribution to the Stock Fund and Non-Equity Fund be increased to $75,000. *See* Backup System Report at 58.

[13] The President's Working Group on Financial Markets recommended that clearing organizations review the adequacy of their required clearing fund contributions. See Interim Report of the President's Working Group on Financial Markets (May 1988) Appendix D ("Working Group Report").

[14] OCC's combined equity and non-equity contract volume has increased from 776,400 (on an average daily basis) at the end of 1984 to an average of 1,012,000 (on an average daily basis) for the period 1985 through 1988. *See* Securities Exchange Act Release No. 27048 (July 20, 1989) 54 FR 31276.

[15] OCC's average non-equity options premium has increased from $247.08 per contract in 1984 to an average of $371.12 per contract for the period between 1985 through 1988. See Securities Exchange Act Release No. 27048 (July 20, 1989) 54 FR 31276.

[16] OCC studied the impact of its proposed increase in minimum required clearing fund contributions by picking an arbitrary date (June 30, 1989) and examining whether its clearing fund, as increased under OCC's proposal, would be sufficient to cover OCC's five largest net pays and collects on that date. OCC has informed the Commission that its clearing fund levels on June 30, 1989 would have been three times greater than the total of the five largest net pays to OCC, and fifteen times greater than the total of the five largest collects from OCC.

The Commission recognizes that increasing the minimum required contribution to OCC's Clearing Fund may serve as a barrier to entry to prospective clearing members, particularly for members and prospective members who desire to participate only in the stock option markets. The Commission believes, however, that the benefits of enhancing OCC's protection against member default outweighs any additional cost to prospective members and existing members with limited capital resources by increasing the amount of capital necessary to participate in OCC. Any prospective member or existing member, who is precluded from becoming or remaining a member because it can not meet OCC's minimum required Clearing Fund contribution, may participate indirectly in OCC by entering into correspondent relationships with other OCC clearing members.

Although the Commission traditionally has not attempted to determine whether a specific dollar amount of Clearing Fund contributions is appropriate,[17] the Commission must review the proposed fund contributions to determine whether the minimum contribution level set by OCC is reasonable in relation to the risks posed to OCC by the activity of its members and is consistent with OCC's obligation to safeguard funds and securities in its custody and control under Section 17A of the Act.[18]

The Commission believes that OCC's proposed minimum required clearing fund contributions enhance OCC's ability to safeguard funds and securities and are adequate in light of the risks posed to OCC by its members' trading activity.[19] As an initial matter, OCC's proposal would result in approximately a 3% increase in the overall dollar amount of OCC's Clearing Fund.[20] Moreover, the composition of OCC's Clearing Fund is such that OCC is assured of having a liquid pool of assets to draw upon in the event of a member default. Under OCC's Bylaws, contributions to its Clearing Fund must be in the form of cash or U.S. Treasury securities.[21] OCC protects the assets in its Clearing Fund against market risk by marking to market daily the Treasury securities contributed to the Clearing Fund. OCC also protects the assets in the Clearing Fund against liquidation risk by valuing short term Treasury securities (i.e., those with less than one year to maturity) at the lesser of their par value or their current market value. Similarly, all other Treasury securities are valued at the lesser of their par value or 95% of their current market value.

OCC's proposal also allows OCC's Clearing Fund to better fulfill one of its basic objectives. For many years, OCC has attempted to set its Clearing Fund requirements at a level sufficient to replace the individual margin deposits of all but the very largest clearing members. OCC has studied whether the proposed increase to its minimum required Clearing Fund contribution would meet this standard by examining the extent to which the Clearing Fund, as increased under OCC's proposal, would cover the margin requirements of its members on a particular day. OCC has informed the Commission that its Stock Fund and Non-Equity Fund on April 15, 1988, would have been sufficient to cover the margin requirements of all but three or four, respectively, of its members' margin requirements on that date.[22] In addition, OCC also has examined whether its Clearing Fund, as increased under the proposal, would be sufficient to cover its five largest net pays and collects under normal market conditions. OCC has informed the Commission that its Clearing Fund levels on April 15, 1988, would have been nine times greater than the total of the five largest net pays to OCC, and eleven times greater than the five largest net collects from OCC on that date.[23]

It is important to note that OCC's Clearing Fund is just one aspect of the systems OCC has in place to protect against the risks posed by member trading activity. Since the October, 1987 market break, OCC has taken a number of steps to increase its level of protection against member default.[24] For example, OCC has increased its members' initial and maintenance net capital requirements from $150,000 and $100,000 to $1,000,000 and $750,000, respectively. OCC has also increased the capital requirements for clearing members that clear for other firms as facilities managers.[25] Moreover, OCC also has a concentration monitoring system in place which monitors its members' positions on a real time basis to determine whether any member has established an unusually large position in a single class of options.[26] OCC has

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[17] *See* Securities Exchange Act Release No. 19999 (July 21, 1983), 48 FR 34554.

[18] Under Section 17A(b)(3)(A), a registered clearing agency must be so organized and have the capacity to safeguard funds and securities that are subject to its custody or control, or for which it is responsible. *See* 15 U.S.C. 78q–1(b)(3)(A) (1982).

[19] After approval of the instant proposal, OCC's clearing fund will incorporate most of the recommendations suggested by the Working Group Report, the Back-up System Report and the Market Break Report.

[20] This figure is derived by calculating the total dollar amount of assets in OCC's Clearing Fund on April 15, 1988, under OCC's present Clearing Fund formula and under OCC's proposed Clearing Fund formula. On April 15, 1988, OCC had $57.9 million in its Non-Equity Fund and $81.0 million in its Stock Fund. Under OCC's proposal, those amounts would be increased to $59.6 million and $83.39 million, respectively

[21] See Article 8, section 3 of OCC's By-laws. OCC's policy of accepting only cash or Treasury securities as acceptable forms of clearing fund deposits is consistent with the Working Group's recommendation that clearing organizations reduce their clearing funds' reliance on letters of credit and increase the liquidity of such funds by accepting only highly liquid assets (such as U.S. Treasury securities) as acceptable forms of deposit.

[22] For example, OCC's five largest equity option margin requirements on April 15, 1988, were as follows:

Firm A	$109.76 million
Firm B	$108.52 million
Firm C	$89.43 million
Firm D	$75.07 million
Firm E	$61.07 million

Under OCC's proposal, OCC would have had $83.39 million in its Stock Fund on the above date.

OCC's five largest non-equity options margin requirements on April 15, 1988 were as follows:

Firm A	$126.62 million
Firm B	$94.26 million
Firm C	$73.03 million
Firm D	$63.69 million
Firm E	$50.14 million

Under OCC's proposal, OCC would have had $59.63 million in its Non-Equity Fund on the above date. Telephone conversation between Michael Cahill, Assistant Vice-President, OCC, and Ross Pazzol, Attorney, Division of Market Regulation, October 3, 1989.

[23] On April 15, 1988, the five largest net pays to OCC totaled $14.99 million, while the five largest net collects from OCC totaled $12.49 million. Under OCC's proposed increase, OCC would have had $143.02 million in its Clearing Fund on April 15, 1988. Telephone conversation between Michael Cahill, Assistant Vice-President, OCC, and Ross Pazzol, Attorney, Division of Market Regulation, October 3, 1989.

[24] Many of the actions taken by OCC were suggested by either the Market Break Report, the Working Group Report or the Backup System Report.

[25] *See* Securities Exchange Act Release No. 26840 (May 19, 1989), 54 FR 23004.

[26] OCC determines the theoretical liquidating value of a member's position with a projection of the margin interval (*i.e.*, the assumed maximum one-day price movement in the asset or index underlying the option) on each option product at three times its regular interval. The projected theoretical portfolio liquidating value is then compared to the margin requirement for the position at its regular interval. The difference between the projected value and the current margin is compared to the excess net capital of the member. This analysis is done by option class and product group for each member account. OCC's surveillance staff reviews any account in which the difference between the projected value and the current margin held exceeds 40% of the member's excess net capital. OCC reviews any account where such difference is 100% in greater detail. If OCC determines that a member's position poses concentration risk, OCC first requires that member

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also taken steps to reduce the number of intermarket payment flows by entering into a cross-margining agreement with the Chicago Mercantile Exchange.[27] In addition, OCC has decreased from 45 to 15 minutes the amount of time needed to calculate variation (i.e. intraday) margin calls and has established procedures allowing it to debit its members' accounts directly to fund these calls.

OCC has also taken steps to improve the quality of information it receives about its members' financial situation. For example, OCC is a member of the Securities Clearing Group, a group of seven clearing agencies that have agreed to consult with one another whenever a common member has been placed on surveillance and to facilitate the monitoring of common member financial condition.[28] OCC also has agreed to participate in the Chicago Board of Trade Clearing Corporation's ("CBTCC") centralized pay and collect system.[29] The Commission believes that, viewed as a whole, all of the above actions will reduce the systemic risk inherent in the clearance and settlement process by better enabling OCC to fulfill its role as the guarantor of its members' settlement obligations.[30]

It should be noted that OCC's proposal, would, for the first time, establish parity between the minimum required contribution to the Stock Fund and the Non-Equity Fund. Under section 17A(b)(3)(D) of the Act, [31] the rules of a clearing agency must provide for the equitable allocation of reasonable dues, fees and other charges among its participants. The Commission believes OCC's proposal is consistent with this standard for the reasons provided below.

Historically, OCC's minimum required clearing fund contribution for non-equity options always has been higher than its minimum required clearing fund contribution for stock options. This disparity was the result of a number of factors. For example, the premium [32] for non-equity options generally was higher than the premium for stock options.[33] Further, the value of the unit of trading for non-equity options generally was greater than such value for equity options.[34]

In addition, OCC, along with all other market participants, sought to provide adequate protection against unforeseen risks of loss when non-equity options were first introduced. Thus, OCC believed that its exposure in connection with members nonequity options activity was greater than its exposure resulting from members' stock options activity.[35]

After gaining some experience with respect to non-equity options, OCC, in 1984, reassessed the risks associated with such options and decreased its minimum required Non-Equity Fund contribution from $100,000 to $50,000.[36] OCC believed that decrease was appropriate because the majority of non-equity option trading involved options on broad-based stock indices whose premiums were at approximately the same level as equity option premiums.[37] In addition, because of the high volume of non-equity options trading in general, and of stock index option trading in particular, OCC estimated that the volume weighted average dollar amount of a non-equity options contract was much lower than expected.[38] Even after this decrease became effective, however, OCC still required a minimum contribution to its non-equity clearing fund which was five times greater than the minimum required contribution to OCC's Stock Fund.

The Commission believes that OCC's proposal to establish parity between the minimum required contributions to its Stock Fund and Non-Equity Fund is consistent with section 17A(b)(3)(D) of the Act. OCC has a number of mechanisms in place which help it offset any possible additional risks associated with the issuance, clearance and settlement of non-equity options. For example, OCC monitors its members' positions on a real time basis to determine whether any member has established an unusually large position in a single class of options.[39] OCC also uses a sophisticated portfolio analysis to determine the appropriate level of a member's daily non-equity options margin requirement.[40] Finally, OCC has gained substantial experience with a wide variety of non-equity options during different market conditions and is familiar with the risks associated with such options. Accordingly, the Commission believes that OCC's identical minimum contribution requirements are appropriate under section 17A(b)(3)(D).

B. Board of Directors Discretion to Increase a New Member's Minimum Required Clearing Fund Deposit

OCC is also amending its rules to grant the Board the authority to increase a member's minimum required clearing fund deposit during its first three months as a member. Currently, OCC requires new members to deposit the minimum required amount to the appropriate clearing fund upon admission to membership at OCC. This amount remains constant during the member's first three months of membership.[41] After such time period, a member's minimum required clearing fund contribution may be increased to reflect the risks posed to OCC by such member's trading activity. OCC proposes to grant the Board the

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to provide cover for short call positions. OCC also may require members to reduce their exposure to large market moves by purchasing or selling options contracts to hedge their position. OCC also may require members to maintain higher than normal margin deposits for concentrated positions. *See* Backup System Report at 47–49.

[27] *See* Securities Exchange Act Release No. 27296 (September 26, 1989) [File No. SR–OCC–89–1]. This development also implements one of the recommendations made in the Working Group Report.

[28] *See* Securities Exchange Act Release No. 27044 (July 18, 1989), 54 FR 30963.

[29] The CBTCC has in place a system for the routine electronic exchange of pay and collect data provided by various futures clearing organizations and OCC. OCC's participation in this system follows the Working Group's recommendation that securities and futures clearing organizations work toward developing a centralized facility for the collection of pay and collect data.

[30] The Commission notes that OCC has still not completed action on some of the recommendations made in the Backup Report, including, guaranteeing trades as they are compared, instead of making OCC's guarantee conditional upon payment of the premium.

[31] *See* 15 U.S.C. 78q–1(b)(3)(D) (1982).

[32] The "premium" of an option is its contract price.

[33] *See* Securities Exchange Act Release No. 19139 (October 14, 1982), 47 FR 46940.

[34] *Id.*

[35] *Id.*

[36] *See* Securities Exchange Act Release No. 21437 (October 31, 1984), 49 FR 44347.

[37] *Id.*

[38] *Id.*

[39] *See* note 26, *supra*.

[40] Both OCC's equity and non-equity option margin calculations are based, in part, on options premiums. In both systems, margin is marked to market daily based on closing ask prices. The second component of equity options margin is based on a flat 30% of the current value of the underlying securities. The second component of non-equity options margin is more flexible and is adjusted according to the current risk posed to OCC by the member's position. *See* Market Break Report at 10–50.

OCC's non-equity options margin system uses options price theory to project the cost of liquidating a member's position in the event of an assumed "worst-case" change in the price of the underlying asset or index. The margin requirement on the same class of options equals the premium plus the additional margin for that class group. OCC calculates the additional margin by determining the assumed maximum one-day price movement in the underlying assets and by projecting the liquidating value of such position. To provide additional protection, OCC presumes that the cost of liquidating a member's out of the money positions would increase by a minimum of 25% of the margin interval. *See* Market Break Report at 10–36. For a more detailed description of OCC's non-equity options margin system, *see* Backup System Report at 24–28. OCC recently filed a proposed rule change with the Commission which would apply OCC's non-equity options margin methodology to equity options. See File No SR–OCC–89–12.

[41] *See* Article 8, section 2 of OCC's By-laws.

authority to increase a member's minimum required clearing fund contribution during the first three months of its membership.

The Commission believes that the proposal serves to protect investors and the public interest and is thus consistent with Section 17A. As stated previously,[42] the Standards require a clearing agency to make an assessment of the risks to which it is subject and set its clearing fund requirements accordingly. The Commission views this obligation to be fluid rather than static and believes that a clearing agency's rules should give it the flexibility to make adjustments to its minimum required clearing fund contributions as circumstances may necessitate.

Under OCC's current rules, a new member's required clearing fund contribution is fixed for three months, but a member's level of options activity is not limited accordingly during such period. The anomalous result is that OCC is required to allow a new member to maintain a minimum required clearing fund deposit which may bear no reasonable relationship to the risk such member's options activity poses to OCC during the initial phase of its membership.[43] Such a result is inconsistent with the policy established by the Standards and with OCC's previous actions.[44] Therefore, the Commission believes that OCC's proposal to give the Board the flexibility to adjust a new member's minimum required clearing fund contribution is designed to safeguard securities and funds in OCC's custody or control or for which it is responsible under section 17A(b)(3)(A).

C. Charging Losses to Retained Earnings

OCC also is amending its rules to permit it to charge losses resulting from clearing member, bank or clearing organization defaults to OCC's retained earnings, instead of charging such losses either pro-rata to the clearing fund contributions of non-defaulting clearing members or to OCC's current earnings. Similar to OCC's proposal to give the Board discretion to increase a member's minimum required clearing fund deposit, the discretion to charge losses to retained earnings gives OCC additional flexibility in dealing with losses by providing it with an additional source of funds to draw upon in the event of a default. Accordingly, the Commission believes that this proposal is consistent with section 17A of the Act.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed filing (SR–OCC–89–06) be, and is hereby, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–28594 Filed 12–6–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–27491; File No. SR–PHILADEP–89–02]

Self-Regulatory Organizations; Philadelphia Depository Trust Company; Order Granting Temporary Approval of a Proposed Rule Change Concerning Enhancements to Telecommunications System

November 30, 1989.

On April 26, 1989, the Philadelphia Depository Trust Company ("PHILADEP") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] filed a proposed rule change to effect certain enhancements to Philanet Terminal Communications System ("PTCS") and to establish PTCS as a permanent service.[2] Notice of the proposal appeared in the **Federal Register** on June 7, 1989.[3] No comments were received. This order approves the proposal on a temporary basis until March 31, 1990.

I. Description

The proposal would authorize PHILADEP to offer its participants additional telecommunications services including interfaced clearing agency services, and increased protection against unauthorized access to participant account information. Participants may connect to PTCS by using a dedicated line or a dial-up connection. To prevent unauthorized access to PHILADEP's computers and to participant's account information, direct access and dial-up participants must use a two-step sign-on procedure:

Step 1: The participant enters the command "CSSN," which will prompt the system to respond with a request for the participant's name and password.[4]

Step 2: The participant must enter his name and password. The password will not appear on the screen when typed so that it remains concealed. The security system will validate both name and associated password before allowing the participant to proceed. If an unauthorized password is entered, PTCS security will not allow further access to the system's services.

To further protect the integrity of PHILADEP's telecommunications services, PHILADEP requires dial-up participants to pass an additional level of access before they are allowed access to PTCS. If the participant's equipment uses a different line speed than PHILADEP's standard line speed, the participant must re-enter the password for verification before PHILADEP will upgrade or convert its line speed to allow access to PTCS.

If the dial-up user's terminal equipment is physically compatible with PTCS, PHILADEP will configure the user's software with a five digit access code to be maintained in the participant's software equipment. The five digit access code does not have to be entered by the participant at sign-on time. When the participant dials-in, the access code will be matched automatically with a code maintained in PHILADEP's communications software.

PTCS uses a software security package ("account security") to insure that only participants from authorized terminals can access the participant's account. Account security is based on the participant's account code and the identification of the terminal where the transaction originated ("terminal ID"). PHILADEP's administrative personnel maintains an account list and issues account codes and terminal IDs to participants who are authorized to access PTCS. PHILADEP's systems software is programmed by PHILADEP's Financial Automation Corporation (FAC) to automatically search for the participant's terminal ID from the system's data table when the participant's account code and ID are entered from the participant's terminal. The data table is a part of PHILADEP's communications software and is maintained by administrative personnel

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[42] *See* discussion at note 10, *supra.*

[43] Other protective measures reduce the potential risk to OCC. For example, a new member's margin deposit requirement is not subject to any fixed limit and will vary depending on the risk associated with the member's options positions. *See* note 26, *supra.*

[44] *See* notes 21 and 24, *supra.*

[1] 15 U.S.C. 78s(b)(1).

[2] PTCS is an electronic communications system linking PHILADEP to its participants. The PTCS proposal was previously filed and approved as a pilot program. *See* Securities Exchange Act Release No. 20519 (December 30, 1983) 49 FR 966.

[3] *See* Securities Exchange Act Release No. 26872 (May 30, 1989), 54 FR 24451.

[4] Each PHILADEP participant is assigned a confidential and unique password. Passwords will expire at the end of thirty days, but may be changed by the participant at any time.

after initial programming. When a transaction is entered, the system will use the account code to access the participant's Account Profile (from the data table) where a list of valid terminal IDs for the participant's account is maintained. The system will search the list of IDs for a match on the terminal that submitted the transaction. If a match is found, processing will continue. If no match is found, an error message will be returned to the terminal that submitted the transaction, and processing will be terminated.

PHILADEP reports that it has not experienced any security breaches to date under its current security measures. PHILADEP, however, continues to evaluate the efficacy of access to PTCS through dial-up connections. In addition, PHILADEP plans to implement dial-back measures by early 1990. Moreover, PHILADEP plans to conduct a full security audit by 1990 to evaluate the effectiveness of its current security system.

The proposed rule change is designed to meet participant demand for additional uses [5] by offering participants access and inquiry concerning: (1) Final money settlement information; (2) deliveries and receives that make up a participant's settlement figure; (3) reorganization notices; (4) daily reorganization settlements; (5) daily dividend and interest settlement and announcement information; and (6) customer transfer of securities information. Through PTCS, participants may reprint individual tickets or groups of delivery or receive movement tickets at their terminal printers. Also, in the event a delivering firm enters a delivery order but has insufficient position to fill it immediately, PHILADEP'S Delivery Order Recycle facility will generate a notice ticket for the receiving firm of the intent to deliver. The system will monitor the delivering firm's incoming position for two hours after the delivery order is received. If sufficient position is accrued during this period, the delivery order will be matched and filled the same day. Deliveries that are not filled by the cutoff time will pend in the system to the following day, and the intent to deliver notice will be generated each morning for a maximum period of thirty days until the order is filled or cancelled. Also added to PTCS is PHILADEP'S Reorganization Notice facility which will provide a daily listing of expiring voluntary offers for participants and a last warning notice (one day before cutoff date) of PHILADEP's cutoff date for excepting instructions for voluntary offers.

II. PHILADEP's Rationale

PHILADEP believes the proposed rule change is consistent with section 17A(b)(3)(A) of the Act in that it enhances PHILADEP's "capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible." [6] PHILADEP also believes the proposal is consistent with the Congressional objective of facilitating the development of a national system for clearance and settlement of securities transactions. In particular, the proposal represents "[n]ew data processing and communications techniques [that] create the opportunity for more efficient and safe procedures for clearance and settlement." [7] In light of the above, PHILADEP believes that it is appropriate for the Commission to authorize PTCS to be implemented on a permanent basis at this time.

III. Conclusion

The Commission believes that the proposal is consistent with the Act and, in particular, with section 17A of the Act. The proposal will facilitate the prompt and accurate clearance and settlement of securities transactions and encourage the use of automation techniques. The use of dial-up connections will allow greater participation in PHILADEP's automated communications system.

The use of dial-up connections, however, raises safety and security concerns. Therefore, in order to assess the adequacy of PHILADEP's PTCS, the Commission is approving the proposal on a temporary basis until March 31, 1990. During the temporary approval period, the Commission will continue to review the proposal and expects to seek further information from PHILADEP regarding the safety and security of its communications system.

It is therefore ordered, that PHILADEP's proposed rule change (SR-PHILADEP 89-02) be, and hereby is approved on a temporary basis until March 31, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-28536 Filed 12-6-89; 8:45 am]

BILLING CODE 8010-01-M

[5] *See* Securities Exchange Act Release No. 20519 (December 30, 1983) 49 FR 966 (January 6, 1984).

[6] 15 U.S.C. § 78q-1 (1988).

[7] *Id.*

[Release No. 34-27492; File No. SR-PSE-89-27]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to a Lead Market Maker System ("LMM") in Certain Options Contracts

Pursuant to section 9(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 5, 1989, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend PSE Rule VI in order to adopt Sections 88 and 89 governing the establishment and structure of a Lead Market Maker ("LMM") System. The proposed LMM System supplements the standard PSE options trading pit by establishing LMMs for certain options classes. For these options classes, an Exchange member that is designated an LMM assumes responsibilities and acquires rights beyond those undertaken by PSE market makers that trade in that options class. The Exchange proposes to establish the LMM System for certain options classes, primarily new options classes and current options classes with comparatively low volume. Any options class converted to the LMM system would be assigned to a segregated area of the Options Trading Floor designated for such purpose.

The PSE proposes that an LMM, in addition to fulfilling general market maker obligations, must, among other things, be present throughout every business day, assure that disseminated market quotations are accurate, assure that each disseminated market quotation shall be honored for a minimum of ten contracts, and participate at all times in any automated execution system that is operating. As a result of being an LMM, a member will be allocated 20% participation in trades occurring on his disseminated bids and

offers in his LMM-appointed options class.

The PSE proposal establishes financial requirements for prospective LMMs and outlines the selection process that the LMM Appointment Committee ("Committee") will utilize to select LMMs. The proposal also provides the Committee, among other things, with authority to relieve an LMM of his appointment and to discontinue the use of the LMM System in a particular options class under certain conditions. Additionally the proposal establishes limitations on dealings by LMMs and "chinese wall" procedures to prevent improper activity as a result of LMM affiliations with upstairs firms.

The PSE requests that these rules be implemented on an eighteen (18) month pilot basis in order to allow the PSE an opportunity to evaluate the effectiveness of this LMM System. The full text of the proposed rule is available at the PSE or the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for the Proposed Rule Change

The proposed rule amendment establishes the structure of an eighteen (18) month pilot program of a system for options trading to be known as the LMM system.

The purpose of the proposed LMM pilot program is to enhance the ability of the Exchange to compete in the changing options trading market, especially in light of the multiple trading system scheduled to begin on January 22, 1990, pursuant to Rule 19C–5 under the Act.

The LMM pilot program is basically broken down into two main segments, both of which are to be incorporated into Exchange Rule VI. The first part, detailed in proposed Section 88, establishes the basic trading elements and structure of the pilot program. In addition to establishing the basic life span of the system at 18 months, it also sets the parameters for those options classes that fall under the LMM system. These will include options classes offered for trading after January 1, 1990, or in any existing options class whose average monthly volume for the previous six months ranks it in the bottom 20% of class activity for the Option Floor.

Other elements of section 88 outline the guidelines for the appointment and removal of an LMM, the structure of the LMM Appointment Committee, the criteria and duties by which an LMM performance will be measured and the hearing process to be used when an LMM appointment is denied or terminated.

The second part of the LMM proposal is contained within proposed section 89, which details the elements to be observed in establishing a "chinese wall" designed to prevent improper activity from occurring as a result of LMM affiliations with upstairs firms.

The PSE believes the proposed rule change is consistent with section 6(b)(5) of the Act, in that it will facilitate transactions, will act in accordance with designs to foster a free and open market, and will promote the protection of investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The LMM is the result of extensive discussions generated from the Multiple Trading Sub-Committee, the Options Floor Trading Committee and a group representing pit traders.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period: (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 28, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Dated: December 1, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–28595 Filed 12-6-89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–27487; File No. SR–PHLX–89–53]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Required Staffing on the Options Floor

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(l), notice is hereby given that on November 8, 1989 the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 17 CFR 200.30–3(a)(12) (1989).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Options Floor Procedure Advice E–I in accordance with PHLX Rule 970 regarding the required staffing on the options trading floor after the close for the purposes of effecting adjustments and changes to rectify incorrect trades. The following is the full text of the proposed amendment (italics indicate additions; brackets indicate deletions).

E–1 Required Staffing of Options Floor

Every options specialist unit, floor brokerage unit, clearing firm, Floor Broker and Registered Options Trader must have a representative available on the floor for the thirty minutes before opening and the thirty minutes after the close of trading and one hour after the preliminary trade reports are distributed. Such representatives must be authorized to make appropriate changes and corrections to trades of or guaranteed by such specialist unit, floor brokerage unit, clearing firm, Floor Broker and registered Options Trader. *Additionally, on expiration Saturday such representatives must be available on The Floor from 8:00 AM to the Exchange's last call for adjustments in expiring options.*

Fine Schedule

1st Occurrance—Warning
2nd Occurance—$500.00
3rd Occurance—$500.00
4th and Thereafter—Sanction is discretionary with business Conduct Committee

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to meet the urgency of correcting transactional errors or mismatched trades on expiration Saturday by requiring a representative for floor brokers and ROT's to be available on the trading floor on expiration Saturday. In this respect, the business of clearing transactions on expiration Saturday is like every other trading day. Therefore, it is imperative to require the trading firms to be properly staffed on expiration Saturday to carry on all the ordinary business activities and responsibilities incident to the trading.

The Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to further facilitate transactions in securities, to promote the mechanism of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organizations Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 28, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Dated: November 30, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–28596 Filed 12–6–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17248; 812–7289]

American Tax Credit Properties II L.P., Notice of Application

November 30, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: American Tax Credit Properties II L.P. (the "Partnership") and Richman Tax Credit Properties II L.P. (the "General Partner").

Relevant 1940 act sections: Exemption under section 6(c) from all provisions of the 1940 Act.

Summary of application: Applicants seek an order exempting the Partnership from all provisions of the 1940 Act to permit the Partnership to invest in other limited partnerships that, in turn, will engage in the ownership, operation, and possibly development or rehabilitation of low and moderate income housing projects that qualify for certain tax credits allowable under the Internal Revenue Code of 1986.

Filing date: The application was filed on April 10, 1989 and amended on September 15, 1989, and November 20, 1989.

Hearing or notification of hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 26, 1989, and should be

[1] 17 CFR 200.30–3(a)(12) (1989).

accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 750 Taxter Road, Suite 420, Elmsford, New York 10523.

FOR FURTHER INFORMATION CONTACT: Barbara Chretien-Dar, Staff Attorney, at (202) 272-3022, or Stephanie Monaco, Branch Chief, at (202) 272–3030.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland, (301) 258–4300).

Applicants' Representations

1. The Partnership was formed under the Delaware Revised Uniform Limited Partnership Act on October 26, 1988. On November 1, 1988, the Partnership filed a Registration Statement (as amended on February 28, 1989 and April 21, 1989) under the Securities Act of 1933 ("Securities Act") for the sale of 100,000 units of Limited Partnership interests ("Units") at $1,000 per Unit. The registration statement was declared effective May 9, 1989. The offering will terminate no later than December 31, 1989. The Partnership intends to offer 50,000 Units but has registered 100,000 Units because Merrill Lynch, Pierce, Fenner & Smith Incorporated (the "Selling Agent"), the Partnership and the General Partner have the right, exercisable by mutual agreement, to sell (on the same terms and conditions as the other Units) up to an additional 50,000 Units on behalf of the Partnership. Purchasers of Units will become limited partners ("Limited Partners") of the Partnership.

2. The Partnership will operate as a "two-tier" entity, *i.e.*, the Partnership, as a limited partner, will invest in other limited partnerships ("Local Partnerships") which will engage in the ownership, operation, and possibly development or rehabilitation of low and moderate income housing ("Properties") benefitting from some form of federal, state, or local government housing assistance. The ownership of such Properties is expected to generate certain tax credits allowable under the Internal Revenue Code of 1986 ("Code"). The Partnership's principal investment objectives are to invest in Local Partnerships which own and operate Properties in a manner which will: (i) Provide the Limited Partners with low-income credits and, to a lesser extent, rehabilitation credits which may be used to offset their federal income tax liability; (ii) allocate passive losses to individual Limited Partners to offset passive income that they may realize from rental real estate investments and other passive activities, and allocate passive losses to corporate Limited Partners to offset active business income; (iii) preserve and protect the Partnership's capital; (iv) provide to the Limited Partners, to the extent feasible, distributions of cash, if any, from the operations of the Properties (current taxes on which are expected to be substantially deferred); and (v) provide to the Limited Partners, to the extent feasible, distributions of cash, if any, from sale or refinancing proceeds upon the disposition or refinancing of the Properties, including amounts attributable to capital appreciation. In no case will investments be made in Properties that are not eligible for low-income credits.

3. The Partnership intends to acquire 90% to 99% of the interest in the Local Partnerships. However, to the extent the Partnership has less than the amount of funds necessary to acquire a 90% to 99% interest in a particular Local Partnership (such as may be the case with respect to amounts remaining after all other investments have been made), the Partnership may invest such amounts in joint ventures with affiliates. The Partnership does not anticipate that the aggregate of such amounts will exceed 5% of the gross offering proceeds. Furthermore, such investment is subject to certain restrictions, as disclosed in the Partnership's prospectus, to minimize conflicts of interest. Such restrictions require, for example, that (i) the investment objectives of the affiliate be substantially the same as those of the Partnership; (ii) there be no duplicative property management or other fees; (iii) the Partnership has a right of first refusal to buy if the affiliate wishes to sell its interest; and (iv) the investment be on substantially the same terms and conditions.

4. Offers to sell and sales to the public of the Units are to be effected through the Selling Agent. However, any subscriptions for Units must be approved by the General Partner, which approval is conditioned upon representations as to suitability of the investment for each subscriber. Each subscriber will represent, among other things, that he meets the general investor suitability standards. Such general investor suitability standards provide, among other things, that investment in the Partnership is suitable only for an investor (a "Qualified Investor") who meets the following requirements: (a) for corporate investors (i) corporations subject to Subchapter S of the Code and C Corporations that are personal service corporations must reasonably expect to have substantial unsheltered passive activity income; (ii) C Corporations that are not closely held and are not personal service corporations must reasonably expect to have sufficient taxable income from all sources to use the low-income and rehabilitation credits and any Partnership losses; and (iii) closely-held C Corporations that are not personal service corporations must reasonably expect to have taxable income from an active trade or business and/or sufficient unsheltered passive activity income to use the low-income and rehabilitation credits; or (b) in the case of noncorporate investors, (i) such investors must reasonably expect to have an annual adjusted gross income, and married investors expect to have a combined annual adjusted gross income, of not more than $200,000 in each year in which they will be allocated low-income credits; or (ii) such investors must have substantial unsheltered passive activity income. In addition, each subscriber must represent that he (i) has a net worth (exclusive of home, home furnishings, and personal automobiles) of at least $30,000 and an annual gross income of not less than $30,000; (ii) has a net worth (exclusive of home, home furnishings, and personal automobiles) of at least $75,000; or (iii) is purchasing in a fiduciary capacity for a person or entity having the net worth and annual gross income as set forth in clause (i) or such net worth as set forth in clause (ii). Units will be sold in certain states only to persons who meet additional or alternative standards that will be set forth in the prospectus; provided, however, that in no event shall the Partnership employ any such suitability standard which is less restrictive than set forth above. Furthermore, no transfer of Units will be permitted unless the transferee meets the same suitability standards as the transferor Limited Partner. The Partnership's Amended and Restated Agreement of Limited Partnership (the "Partnership Agreement") imposes substantial restrictions on transferability of the Units. The Partnership believes that the suitability standards set forth above are consistent with the requirements of Investment Company Act Release No.

8456 (Aug. 9, 1974) ("Release No. 8456") and are consistent with the guidelines of those states that prescribe suitability standards.

5. All proceeds of the public offering of Units initially will be placed in an escrow account with Security Pacific National Trust Company (New York). Any net proceeds of the offering which the Partnership has not invested in Local Partnerships or applied to reserves upon release from escrow will be returned by the Partnership to the Limited Partners *pro rata* as a return of capital. The Partnership will invest any net proceeds not immediately utilized to acquire Local Partnership interests or for other Partnership purposes (such as the establishment of an initial reserve) in permitted interim investments including (i) readily marketable securities issued by states or municipalities within the United States rated "A" or better by a recognized rating agency; (ii) direct obligations of, or obligations unconditionally guaranteed by, the United States or any agency thereof; (iii) commercial paper issued by any corporation organized and doing business under the laws of the United States or any state thereof rated in one of the two highest categories by Moody's Investor Service, Inc. and by Standard & Poor's Corporation; (iv) certificates of deposit or Eurodollar certificates of deposit issued by commercial banks organized and doing business under the laws of the United States or any state thereof (or, in the case of Eurodollar certificates of deposit, a branch of any such bank); (v) debt securities issued by corporations organized and doing business under the laws of the United States or any state thereof rated "A" or better by a recognized rating agency, provided that a dealer which is a member of the New York Stock Exchange maintains a regular market in such securities; (vi) collateralized repurchase agreements with domestic banks having a duration no longer than 60 days (or any extension or renewal for a period not exceeding the period of initial agreement) with respect to or secured by any of the types of securities specified in clauses (i) through (iii) above; and (vii) shares of any open-end investment company which has assets of not less than $200 million and invests primarily in securities of the type enumerated above or banker's acceptances; provided, however, that if the value of "investment securities" (as defined in the 1940 Act) exceeds 40% of the value of the Partnership's total assets (exclusive of government securities and cash items) at any time, such excess may be invested only in government securities. The Partnership does not intend to trade and will not speculate in any temporary investments.

6. The Partnership will be controlled by its General Partner, while the Limited Partners, consistent with their limited liability status, will not be entitled to participate in the control of the Partnership business. Limited Partners owning a majority of Partnership interests, however, will have the right to (i) amend the Partnerships Agreement (subject to certain limitations); (ii) remove the General Partner and elect a replacement therefor; and (iii) dissolve the Partnership. Each Limited Partner also is entitled to review all books and records of the Partnership at any and all reasonable times.

7. The Partnership Agreement provides that the General Partner cannot take certain significant actions without the consent of a majority in interest of the Limited Partners, including (i) the sale of all or substantially all of the Partnership's assets; (ii) the dissolution of the Partnership; and (iii) any amendment of the Partnership Agreement except for certain ministerial or technical amendments.

8. The Selling Agent will receive commissions of $60 per Unit and a financial advisory fee of $20 per Unit. In addition, the Selling Agent will be reimbursed by the Partnership or the General Partner up to the limits specified in the prospectus for out-of-pocket expenses incurred by it in connection with the offering. Selling commissions and other remunerations based on 8% of the gross proceeds customarily are charged in securities offerings of this type and are consistent with the guidelines of the National Association of Securities Dealers, Inc.

9. Acquisition phase fees payable to the General Partner or its affiliates will be limited by the Statement of Policy on Real Estate Programs adopted by the North American Securities Administrators Association, Inc. (the "NASAA guidelines"). In addition, the General Partner and its affiliates will receive substantial fees and compensation from the Partnership, including acquisition expenses allowances, property development fees, management fees, property management fees, and administration fees. Further, the local general partners will receive substantial fees and compensation from each Local Partnership. In addition to fees and interests, the General Partner and its affiliates will be allocated generally 1% of profits and losses of the Partnership for tax purposes.

10. All compensation to be paid to the General Partner and its affiliates is specified in the Partnership Agreement and prospectus, and no compensation will be payable to the General Partner or any of its affiliates not so specified. The substantial fees and other forms of compensation that will be paid to the General Partner and its affiliates will not have been arrived at through arm's length negotiations. All such compensation, however, is believed to be fair and on terms no less favorable to the Partnership than would be the case if such terms had been negotiated with independent third parties. Further, the Partnership believes that such compensation meets all applicable guidelines necessary to permit the Units to be offered and sold in the various states which prescribe such guidelines, including the NASAA guidelines.

11. The Partnership believes that any potential conflict of interest between the General Partner or its affiliates and the Limited Partners are disclosed in the prospectus, including the receipt of fees and other compensation by the General Partner and its affiliates, competition by Local Partnerships with affiliates of the General Partner for Properties, and the risks involved in the Partnership's investments in joint ventures with other partnerships formed by the General Partner. The Partnership Agreement contains various provisions designed to eliminate or significantly reduce these and other conflicts of interest. For example, in connection with investment opportunities which might be available to more than one entity that the General Partner or one of its affiliates advises or manages, the determination of suitability of the investment for each entity will be based on a review of each entity's portfolio. If an investment is suitable for more than one entity, priority will be given to the entity having uninvested funds for the longest period of time. In addition, the Partnership will distribute to the Limited Partners reports concerning its business and operations in order to ensure that Limited Partners receive extensive information about the Partnership.

12. The Partnership Agreement provides for indemnification of the General Partner and its affiliates against any losses, judgments, liabilities, costs, expenses and amounts paid in settlement of claims sustained in connection with the Partnership, provided that the same were not the result of fraud, negligence, misconduct or breach of fiduciary duty. The General Partner is aware, however, and the prospectus discloses that it is the opinion of the SEC that indemnification

for liabilities arising under the Securities Act is contrary to public policy and, therefore, unenforceable.

Applicants' Legal Conclusion

1. The Applicants assert that the exemption of the Partnership from all provisions of the Act pursuant to section 6(c) of the Act is both necessary and appropriate in the public interest, because: (a) Investment in low and moderate income housing in accordance with the national policy expressed in title IX of the Housing and Urban Development Act of 1968 is not economically suitable for private investors without the tax and organizational advantages of the limited partnership form; (b) the limited partnership structure is the primary means of bringing private equity capital into such housing, particularly because public investors typically consider investment in low and moderate income housing programs as involving greater risk than real estate investment generally; (c) the limited partnership form insulates each Limited Partner from personal liability and limits the financial risk of such partner to the amount he has invested in the program, while also allowing him to claim on his individual tax return his proportionate share of the credits, income and losses from the investment; and (d) the limited partnership form is incompatible with many provisions of the 1940 Act, such as the requirement that investment companies be managed by unaffiliated persons or the asset coverage limitations in section 18. Thus, an exemption from these basic provisions is necessary and appropriate so as not to discourage use of the two-tier limited partnership entity and frustrate the public policy established by the housing laws.

2. Release No. 8456 contemplates that the exemptive power of the SEC under section 6(c) may be applied to two-tier limited partners engaged in the kind of activities in which the Partnership will engage, that is, "two-tier partnerships that invest in limited partnerships engaged in the development and building of housing for low and moderate income persons * * *." The release lists two conditions, designed for the protection of investors, which must be satisfied in order to qualify for such an exemption: (1) "Interests in the issuer should be sold only to persons for whom investments in limited profit, essentially taxshelter, investments would not be unsuitable;" and (2) "requirements for fair dealing by the General Partners of the issuer with the limited partners of the issuer should be included in the basic organizational documents of the company." The Partnership will comply with these conditions and will otherwise operate in a manner designed to insure investor protection.

3. The contemplated arrangement of the Partnership is not susceptible to abuses of the sort the Act was designed to remedy. The suitability standards described above, the requirements for fair dealing provided by the Partnership's governing instruments, and pertinent governmental regulations imposed on each Local Partnership by various federal, state and local agencies, provided protection to investors in Units comparable to, and in some respects greater than, that provided by the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-28537 Filed 12-6-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-17247; File No. 812-7398]

Confederation Life Insurance and Annuity Company, et al.

November 29, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

Applicants: Confederation Life Insurance and Annuity Company ("CLIAC"); CLIAC Separate Account A; and Confederation Financial Services, (U.S.), Inc. ("CFS").

Relevant 1940 act sections: Exemption requested under section 6(c) from sections 26(a)(2)(C) and 27(c)(2).

Summary of Application: Applicants seek an order to the extent necessary to permit the deduction of a mortality and expense risk charge from the assets of the Separate Account with respect to certain variable annuity contracts.

Filing Date: The application was filed on September 25, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on December 26, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Steven P. Sprague, Esq., Confederation Life Insurance and Annuity Company, P.O. Box 105103, 260 Interstate North, Atlanta, Georgia 30348.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Staff Attorney, at (202) 272-3046 or Clifford E. Kirsch, Acting Assistant Director, at (202) 272-2061 (Division of Investment Management, Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application: the complete application is available for a fee from either the Public Reference Branch in person or the Commission's commercial copier which may be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. CLIAC, a stock life insurance company incorporated under the laws of the State of Georgia, is a wholly owned subsidiary of Confederation Life Insurance Company, a Canadian mutual insurance company. The Separate Account was established by CLIAC in connection with the proposed issuance of individual deferred variable annuity contracts ("Contracts"). CFS will serve as distributor and principal underwriter of the Contracts.

2. The Separate Account will invest in shares of the Oppenheimer Variable Account Funds ("Series Fund"). The Series Fund is an open-end, diversified management investment company with a number of series, or portfolios. The Separate Account has a number of subaccounts, each of which invests solely in the specific corresponding portfolio of the Series Fund.

3. CLIAC will deduct an Annual Contract Fee of $30 per year per contract from the Accumulation Account at the end of each policy year prior to the Annuity Date (and on full surrender on any date other than a Contract Anniversary) to partially compensate CLIAC for administrative services provided to contract owners. This charge is guaranteed not to increase. In addition, there is a daily charge to the Separate Account at an effective annual rate of 0.10% of the Separate Account assets. This charge may be increased in the future. CLIAC does not anticipate any profit from these charges; they are cost-based in accordance with Rule 26a-1 under the Act.

4. On full surrenders or partial withdrawals, CLIAC will deduct a

contingent deferred sales charge of up to 6% of the amount withdrawn to cover expenses relating to the sale of the Contracts. The aggregate contingent deferred sales charge is guaranteed never to exceed 6% of total deposits. The charge scales down to 0 on withdrawals of deposits made more than five years prior to the withdrawal.

5. CLIAC imposes a daily charge to compensate it for bearing certain mortality and expense risks under the Contracts. This charge is equal to an effective annual rate of 1.25% of the net assets of the Separate Account. Of that amount, approximately .95% is attributable to mortality risks, and approximately .30% is attributable to expense risks. CLIAC guarantees that this charge will never increase. CLIAC currently anticipates a profit from this charge. CLIAC does not anticipate that the contingent deferred sales charges will generate sufficient funds to pay the costs of distributing the contracts. If these charges are insufficient sales costs, the deficiency will be met from CLIAC's general account funds, which may include amounts derived from the charge for mortality and expense risks.

6. The mortality risk borne by CLIAC arises from its obligation to make monthly annuity payments regardless of how long all annuitants may live, and from its obligation to pay a death benefit that may be higher than the value of the Accumulation Account of a Contract. The expense risk is that the deductions for administration costs under the Contracts may be insufficient to cover the actual future costs incurred by CLIAC.

7. CLIAC argues that the mortality and expense risk charge is a reasonable charge to compensate CLIAC for the risk that annuitants under the Contracts will live longer as a group than has been anticipated in setting the annuity rates guaranteed in the Contracts; for the risk that the value of the Accumulation Account of a Contract will be less than the death benefit; and for the risk that administrative expenses will be greater than amounts derived from the administrative charges.

8. CLIAC represents that the charge of 1.25% for mortality and expense risks is within the range of industry practice with respect to comparable annuity products. This representation is based upon CLIAC's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. CLIAC will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

9. CLIAC has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Account and the Owner. The basis for such conclusion is set forth in a memorandum which will be maintained by CLIAC at its administrative offices and will be available to the Commission.

10. CLIAC also represents that the Separate Account will only invest in management investment companies which undertake, in the event such company adopts a plan under Rule 12b–1 to finance distribution expenses, to have a board of directors (or trustees), a majority of whom are not interested persons of the company, formulate and approve any such plan under Rule 12b–1.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–28538 Filed 12–6–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17244, 812–7375]

First Investors Fund for Growth, Inc., et al.; Application for Order Approving Substitution of Securities in Unit Investment Trust

November 29, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Order Approving Substitution under the Investment Company Act of 1940 ("1940 Act").

Applicants: First Investors Fund for Growth, Inc. ("Fund for Growth"), First Investors International Securities Fund, Inc. ("International Securities Fund"), First Investors Management Company, Inc. ("Management Company"), First Investors Corporation ("First Investors"), and First Investors Single Payment and Periodic Payment Plans for Investment in First Investors Fund for Growth, Inc. ("Plan").

Relevant 1940 act sections: Approval requested for substitution of shares pursuant to section 26(b).

Summary of application: Applicants seek an order allowing them to substitute the shares of International Securities Fund for shares of Fund for Growth as the underlying securities of the Plan.

Filing date: The application was filed on August 9, 1989 and amended on November 21, 1989.

Hearing or notification of hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 22, 989, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549; on behalf of Applicants, First Investors Corporation, 120 Wall Street, New York, New York 10005, Attention: Andrew J. Donohue, Senior Vice President, Secretary and General Counsel.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Law Clerk, at (202) 272–2511, or Max Berueffy, Branch Chief, at (202) 272–3016.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. Fund for Growth and International Securities Fund (collectively the "Funds") are diversified open-end management investment companies registered under the 1940 Act. The Management Company is organized under the laws of the State of New York and registered as an investment adviser under the Investment Advisers Act of 1940. The Management Company states that its primary business is as investment adviser of the First Investors group of mutual funds, which includes the Funds. First Investors is organized under the laws of the State of New York and registered as a broker-dealer under the Securities Exchange Act of 1934. First Investors' primary business is as a counderwriter of the First Investors group of mutual funds and as sponsor and underwriter of single payment and periodic payment plans for investment in certain registered investment companies that are members of the First

Investors group of mutual funds. Applicants have indicated that for the purposes of the 1940 Act, First Investors is the underwriter, depositor, and sponsor of the Plan as those terms have been interpreted by the SEC with respect to periodic payment plans.

2. The Plan provides for long-term investment in shares of the Fund for Growth, through single payment and periodic payment plans, with or without insurance. The Plan is organized as a unit investment trust and registered under the 1940 Act (File No. 811–1359). Purchase payments for accounts established under the Plan, net of charges and expenses applicable at the time of purchase, are invested in shares of the Fund for Growth at the current net asset value of such shares.

3. The Board of Directors of Fund for Growth has determined that, under present market conditions, continuation of the Fund for Growth's current policies would not achieve optimal results for its shareholders, and that the more flexible approach employed by the International Securities Fund, including the ability to take advantage of investment opportunities in other markets and additional types of securities, would better enable the Fund for Growth to achieve its objective of long-term capital appreciation. The Board further determined that since International Securities Fund likewise has the primary investment objective of long-term capital growth, the proposed reorganization would best serve Fund for Growth shareholders by affording them the opportunity to participate in a fund with a compatible investment objective. Although International Securities Fund has higher investment advisory, custodian, and accounting fees, the Board of Directors of Fund for Growth believes that these higher fees will be offset by the potential advantages of the International Securities Fund's flexible investment policies.

4. On March 23, 1989, the Funds entered into an Agreement and Plan of Reorganization (the "Agreement") which provides for the transfer of substantially all of the assets of Fund for Growth to International Securities Fund in exchange for shares of common stock of International Securities Fund having the same aggregate net asset value. Pursuant to the Agreement, shares of International Securities Fund will be distributed to Fund for Growth shareholders. Fund for Growth will subsequently file an application to terminate its registration under the 1940 Act and will be liquidated and dissolved.

5. Consummation of the Agreement was specifically predicated on obtaining the approval of a majority of Fund for Growth shareholders at a special meeting of shareholders. Shareholders of Fund for Growth approved the Agreement on August 30, 1989. Holders of Plan accounts ("Planholders") were advised of, and had voting privileges with respect to the Agreement. If a Planholder did not exercise this voting privilege, the Plan's custodian voted such Planholders' shares of the Fund for Growth in proportion to the shares of those Planholders who did exercise their voting privileges.

6. The respective Boards of Directors of the Funds have each unanimously approved the reorganization as being in the best interest of the respective fund shareholders without diluting their interests, after having considered, among other factors, the objectives and policies of each fund, the assets and liabilities of each fund, the prospects of each fund individually and combined, and the fairness to the respective shareholders of each fund as a result of the exchange of shares being done on a net asset value basis.

7. In particular, the respective Boards found that both funds have the same general investment objective of long-term capital growth. Although the investment policies employed to achieve these objectives differ, the Directors of the Funds believe the policies are compatible, because they generally involve investment in equity securities that offer potential for capital appreciation. Consummation of the proposed reorganization and resultant combination of Funds should result in reductions in certain costs of operating the Funds. Additionally, the Boards of Directors of the Funds have each determined that the combination of assets of the Funds would permit greater portfolio diversification, resulting in decreased risk exposure to shareholders under various market conditions. Furthermore, the larger asset base should result in reductions of certain operating expenses applicable to the Funds.

8. The Board of Directors of First Investors has determined that the best course of action for Planholders under the Plan is to provide for continuity of their long-term investment objectives through the continuance of the Plan by means of a substitution of the shares of International Securities Fund for the shares of Fund for Growth in accordance with the reorganization. In so determining, the Board of Directors of First Investors took into account all of the factors considered by the representative Boards of Directors of the Funds.

9. In approving the proposed substitution of shares, the Board of Directors of First Investors noted the following additional factors: (a) The rights of Planholders under the Plan will not be changed as a result of the reorganization; (b) First Investors will remain as the Plan Sponsor, and after the substitution of shares, the only other change to the Plan would be the change of its name to reflect the substituted securities of International Securities Fund; (c) the substitution would be subject to Planholder approval and therefore would not be at the Sponsor's discretion; (d) the Plan permits Planholders adequate voting rights and full disclosure in connection with the reorganization and the proposed substitution; (e) the underlying exchange of shares in connection with the reorganization and the proposed substitution will be at net asset value; and, (f) while the consummation of the reorganization is not expressly contingent on the receipt of a favorable opinion from special counsel, it is anticipated that the substitution will be done on a tax-free basis to Planholders.

10. Applicants state that all expenses and charges involved in the proposed substitution will be borne by First Investors as sponsor except proper transfer taxes and charges customarily charged to shareholders by state or local authorities for securities transfers and that there are no back-end sales charges in connection with the proposed substitution.

Applicants' Legal Analysis

1. Section 26(b) of the Act makes it unlawful for the depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security unless the Commission approves the substitution.

2. Applicants submit, for all the reasons stated herein, that the order requested is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act. Accordingly, Applicants request an order pursuant to section 26(b) of the 1940 Act approving the substitution.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–28599 Filed 12-6-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17243, 812-7366]

First Investors Discovery Fund, Inc., et al.; Application for Order Approving Substitution of Securities in Unit Investment Trust

November 29, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Order Approving Substitution under the Investment Company Act of 1940 ("1940 Act").

Applicants: First Investors Discovery Fund, Inc. ("Discovery Fund"), First Investors International Securities Fund, Inc. ("International Securities Fund"), First Investors Management Company, Inc. ("Management Company"), First Investors Corporation ("First Investors"), and First Investors Single Payment and Periodic Payment Plans for Investment in First Investors Discovery Fund, Inc. ("Plan").

Relevant 1940 act sections: Approval requested for substitution of shares pursuant to section 26(b).

Summary of application: Applicants seek an order allowing them to substitute the shares of International Securities Fund for shares of the Discovery Fund as the underlying securities of the Plan.

Filing Date: The application was filed on July 31, 1989 and amended on November 21, 1989.

Hearing or notification of hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 22, 1989, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549; on behalf of Applicants, First Investors Corporation, 120 Wall Street, New York, New York 10005, Attention: Andrew J. Donohue, Senior Vice President, Secretary and General Counsel.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Law Clerk, at (202) 272-2511, or Max Berueffy, Branch Chief, at (202) 272-3016.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The Discovery Fund and International Securities Fund (collectively the "Funds") are diversified open-end management investment companies registered under the 1940 Act. The Management Company is organized under the laws of the State of New York and registered as an investment adviser under the Investment Advisers Act of 1940. The Management Company states that its primary business is as investment adviser of the First Investors group of mutual funds, which includes the Funds. First Investors is organized under the laws of the State of New York and registered as a broker-dealer under the Securities Exchange Act of 1934. First Investors' primary business is as a co-underwriter of the First Investors group of mutual funds and as sponsor and underwriter of single payment and periodic payment plans for investment in certain registered investment companies that are members of the First Investors group of mutual funds. Applicants have indicated that for the purposes of the 1940 Act, First Investors is the underwriter, depositor, and sponsor of the Plan as those terms have been interpreted by the SEC with respect to periodic payment plans.

2. The Plan provides for long-term investment in shares of the Discovery Fund, through single payment and periodic payment plans, with or without insurance. The Plan is organized as a unit investment trust and registered under the 1940 Act (File No. 811-1903). Purchase payments for accounts established under the Plan, net of charges and expenses applicable at the time of purchase, are invested in shares of the Discovery Fund at the current net asset value of such shares.

3. The Board of Directors of Discovery Fund has determined that, under present market conditions, continuation of the Discovery Fund's current policies would not achieve optimal results for its shareholders, and that the more flexible approach employed by the International Securities Fund, including the ability to take advantage of investment opportunities in other markets and additional types of securities, would better enable the Discovery Fund to achieve its objective of long-term capital appreciation. The Board further determined that since International Securities Fund likewise has the primary investment objective of long-term capital growth, the proposed reorganization would best serve the Discovery Fund shareholders by affording them the opportunity to participate in a fund with a compatible investment objective. Although International Securities Fund has higher investment advisory, custodian, and accounting fees, the Board of Directors of the Discovery Fund believes that these higher fees will be offset by the potential advantages of the International Securities Fund's flexible investment policies.

4. On March 23, 1989, the Funds entered into an Agreement and Plan of Reorganization (the "Agreement") which provides for the transfer of substantially all of the assets of the Discovery Fund to International Securities Fund in exchange for shares of common stock of International Securities Fund having the same aggregate net asset value. Pursuant to the Agreement, shares of International Securities Fund will be distributed to Discovery Fund shareholders. Discovery Fund will subsequently file an application to terminate its registration under the 1940 Act and will be liquidated and dissolved.

5. Consummation of the Agreement was specifically predicated on obtaining the approval of a majority of the Discovery Fund shareholders at a special meeting of shareholders. Shareholders of the Discovery Fund approved the Agreement on September 22, 1989. Holders of Plan accounts ("Planholders") were advised of, and had voting privileges with respect to the Agreement. If a Planholder did not exercise this voting privilege, the Plan's custodian voted such Planholders' shares of the discovery Fund in proportion to the shares of those Planholders who did exercise their voting privileges.

6. The respective Boards of Directors of the Funds have each unanimously approved the reorganization as being in the best interest of the respective fund shareholders without diluting their interests, after having considered, among other factors, the objectives and policies of each fund, the assets and liabilities of each fund, the prospects of each fund individually and combined, and the fairness to the respective shareholders of each fund as a result of the exchange of shares being done on a net asset value basis.

7. In particular, the respective Boards found that both funds have the same general investment objective of long-

term capital growth. Although the investment policies employed to achieve these objectives differ, the Directors of the Funds believe the policies are compatible, because they generally involve investment in equity securities that offer potential for capital appreciation. Consummation of the proposed reorganization and resultant combination of the Funds should result in reductions in certain costs of operating the Funds. Additionally, the Boards of Directors of the Funds have each determined that the combination of assets of the Funds would permit greater portfolio diversification, resulting in decreased risk exposure to shareholders under various market conditions. Furthermore, the larger asset base should result in reductions of certain operating expenses applicable to the Funds.

8. The Board of Directors of First Investors has determined that the best course of action for Planholders under the Plan is to provide for continuity of their long-term investment objectives through the continuance of the Plan by means of a substitution of the shares of International Securities Fund for the shares of the Discovery Fund in accordance with the reorganization. In so determining, the Board of Directors of First Investors took into account all of the factors considered by the representative Boards of Directors of the Funds.

9. In approving the proposed substitution of shares, the Board of Directors of First Investors noted the following additional factors: (a) The rights of Planholders under the Plan will not be changed as a result of the reorganization; (b) First Investors will remain as the Plan Sponsor, and after the substitution of shares, the only other change to the Plan would be the change of its name to reflect the substituted securities of International Securities Fund; (c) the substitution would be subject to Planholder approval and therefore would not be at the Sponsor's discretion; (d) the Plan permits Planholders adequate voting rights and full disclosure in connection with the reorganization and the proposed substitution; (e) the underlying exchange of shares in connection with the reorganization and the proposed substitution will be at net asset value; and, (f) while the consummation of the reorganization is not expressly contingent on the receipt of a favorable opinion from special counsel, it is anticipated that the substitution will be done on a tax-free basis to Planholders.

10. Applicants state that all expenses and charges involved in the proposed substitution will be borne by First Investors as sponsor except proper transfer taxes and charges customarily charged to shareholders by state or local authorities for securities transfers and that there are no back-end sales charges in connection with the proposed substitution.

Applicants' Legal Analysis

1. Section 26(b) of the Act makes it unlawful for the depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security unless the Commission approves the substitution.

2. Applicants submit, for all the reasons stated herein, that the order requested is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act. Accordingly, Applicants request an order pursuant to section 26(b) of the 1940 Act approving the substitution.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-28598 Filed 12-6-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17240; File No. 812-7412]

The Guardian Insurance & Annuity Company, Inc., et al.

November 28, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: The Guardian Insurance & Annuity Company, Inc. ("GIAC"); The Guardian Separate Account D ("Separate Account"); and Guardian Investor Services Corporation.

Relevant 1940 act sections: Exemption requested under section 6(c) from sections 26(a)(2) and 27(c)(2).

Summary of application: Applicants seek an order to the extent necessary to permit the deduction of mortality and expense risk charges from the assets of the Separate Account pursuant to certain variable annuity contracts.

Filing date: October 16, 1989.

Hearing or notification of hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on December 26, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. The Guardian Insurance & Annuity Company, Inc., 201 Park Avenue South, New York, New York 10003.

FOR FURTHER INFORMATION CONTACT: Heidi Stam, Staff Attorney (202) 272-3017 or Clifford E. Kirsch, Acting Assistant Director (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicants' Representations

1. The Separate Account was established in connection with the proposed issuance of individual single premium deferred variable annuity contracts, individual flexible premium deferred variable annuity contracts, and a group unallocated contract (the "Contracts").

2. The Separate Account will invest in shares of the following diversified, open-end management investment companies: the Guardian Cash Fund, the Guardian Stock Fund, the Guardian Bond Fund, Value Line Centurion Fund, and Value Line Strategic Asset Management Trust (the "Funds"). The Separate Account has a number of investment divisions, each of which invests solely in a specific corresponding Fund.

3. GIAC imposes a charge of 1.15% to compensate it for bearing certain mortality and expense risks under the Contracts. The mortality risk borne by GIAC arises from its obligation to make monthly annuity payments regardless of how long all annuitants may live and from its obligation under some forms of the Contracts to pay a death benefit that may be higher than the accumulation value of the Contract. The expense risk is that the deductions for administration costs under the Contracts may be insufficient to cover the actual future costs incurred by GIAC.

4. In addition to the deduction of a mortality and expense risk charge, GIAC will impose a charge for administrative expenses and a

contingent deferred sales charge on certain withdrawals and surrenders. Premium taxes will also be deducted. At the present time, no charges will be deducted for transfers.

5. Under the single premium contract, the contingent deferred sales charge is 6% of the amount withdrawn in the first two contract years, declining by 1% each year after the second year until the charge is 0% in the eighth contract year. Under the flexible premium and group unallocated contracts, the contingent deferred sales charge is the lesser of 6% of the amount withdrawn or 6% of the total payments made during the 84 months immediately preceding the date of the withdrawal. Contingent deferred sales charges may also be imposed upon the selection of certain annuity payout options under the Contracts.

6. GIAC claims that the mortality and expense risk charge is a reasonable charge to compensate GIAC for the risk that annuitants under the Contracts will live longer as a group than has been anticipated in setting the annuity rates guaranteed in the Contracts; for the risk assumed in connection with any death benefit guarantees provided under the Contracts; for the risk that the accumulation value of the Contract will be less than the death benefit under some forms of the Contracts; and for the risk that administrative expenses will be greater than amounts derived from the administrative charges.

7. GIAC represents that the charge of 1.15% for mortality and expense risks is within the range of industry practice with respect to comparable annuity products. This representation is based upon GIAC's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. GIAC will maintain at its executive office, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

8. Applicants acknowledge that the surrender charge may be insufficient to cover all costs relating to the distribution of the Contracts. Applicants further acknowledge that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by sales charges.

9. GIAC has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Account and the contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by GIAC at its executive office and will be available to the Commission.

10. GIAC also represents that the Separate Account will only invest in management investment companies which undertake, in the event such company adopts a plan under Rule 12b-1 to finance distribution expenses, to have a board of directors (or trustees), a majority of whom are not interested persons of the company, formulate and approve any such plan under Rule 12b-1.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-28597 Filed 12-6-89;8:45am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 17245]

Order Temporarily Suspending Redemption of Investment Company Shares Pursuant to Section 22(e)(3) of the Investment Company Act of 1940

November 29, 1989; Time Entered: 6:00 p.m. e.s.t.

In the matter of: Municipal Lease Securities Fund, Inc., 208 South LaSalle Street, Suite 1816, Chicago, Illinois 60604, (File No. 811-4437).

Municipal Lease Securities Fund, Inc. ("MLS Fund") is an open-end investment company registered with the Commission under the Investment Company Act of 1940. Based upon an inspection by its staff, it appears to the Commission that it is not reasonably practicable for the MLS Fund to determine the value of its net assets. The MLS Fund has requested that the Commission issue an Order pursuant to section 22(e) temporarily suspending redemption of the fund's shares.

Section 22(e) of the Investment Company Act provides, in relevant part, that no registered investment company shall suspend the right of redemption except "(2) for any period during which an emergency exists as a result of which * * * (B) it is not reasonably practicable for such company fairly to determine the value of its net assets; or (3) for such other periods as the Commission may by order permit for the protection of security holders of the company."

The Commission further believes that the suspension of the right of redemption of the MLS Fund's outstanding redeemable securities and of payment for shares submitted for redemption but for which payment has not yet been made as of the date and time of the order herein is necessary for the protection of the MLS Fund's shareholders.

Therefore, beginning as of 6:00 p.m., E.S.T., Wednesday, November 29, 1989, *it is ordered* pursuant to section 22(e)(3) of the Investment Company Act that the MLS Fund shall (1) suspend the right of redemption of its outstanding redeemable securities, and (2) postpone the date of payment for shares submitted for redemption but upon which payment has not yet been made as of the date and time of this order. This order shall expire at 11:59 p.m., e.s.t., Friday, December 8, 1989.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-28600 Filed 12-6-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 35-24992]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

November 30, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 26, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

New England Electric System, et al. (70–7535)

New England Electric System ("NEES"), a registered holding company, and ten of its subsidiaries, Granite State Electric Company ("Granite"), Massachusetts Electric Company (Mass Electric"), The Naragansett Electric Company ("Narragansett"), NEES Energy, Inc. ("NEES Energy"), New England Electric Transmission Corporation ("Neet"), New England Energy Incorporated ("NEEI"), New England Hydro-Transmission Electric Company, Inc. ("Mass. Hydro"), New England Hydro-Transmission Corporation ("NH Hydro") New England Power Service Company ("Service Company"), 25 Research Drive, Westborough, Massachusetts 01582, have filed a post-effective amendment to an application-declaration in this proceeding pursuant to sections 6(a), 7, 9(a), 10, and 12(b) of the Act and Rules 40, 45 and 50(a)(5) thereunder.

By orders in this proceeding dated October 21, 1988 (HCAR No. 24733) and July 7, 1989 (HCAR No. 24921), each of the above named subsidiaries with the exeception of NEES Energy, NEEI, Mass. Hydro, and NH Hydro) was authorized through October 31, 1990 to borrow from the NEES money pool and/or, in the cases of Mass Electric and Power Company, to issue commercial paper up to the following maximum outstanding amounts: Granite—$7 million; Mass Electric—$110 million; Narragansett—$50 million; NEET—$10 million; Power Company—$300 million and Service Company—$10 million.

Granite now seeks to increase its short-term borrowing authority from the current $7 million to $12 million.

General Public Utilities Corporation, et al. (70–7720)

GPU Nuclear Corporation ("GPU Nuclear"), One Upper Pond Road, Parsippany, New Jersey 07054, Jersey Central Power & Light Company ("JCP&L"), Madison Avenue at Punchbowl Road, Morristown, New Jersey 07960, Metropolitan Edison Company ("MetEd"), 1800 Pottsville Pike, Reading, Pennsylvania 19640, and Pennsylvania Electric Company ("PennElec"), 10001 Broad Street, Johnstown, Pennsylvania 15907, each a subsidiary company of General Public Utilities Corporation ("GPU"), a registered holding company, have filed an application-declaration under section 13(b) of the Act and Rules 87, 90, and 91 thereunder.

By order dated September 4, 1980 (HCAR No. 21708), GPU was authorized to organize GPU Nuclear to provide certain operating and maintenance services for all nuclear generating facilities owned by JCP&L, MetEd, and PennElec, and related research and development. GPU Nuclear commenced operations on or about January 1, 1982.

GPU Nuclear now proposes to enter into separate service agreements to provide certain additional services, at cost, to JCP&L, MetEd and PennElec in relation to their non-nuclear operations. Specifically, GPU Nuclear proposes to provide: (1) Certain operations and maintenance services for JCP&L's two combustion turbine units and all related equipment located at Forked River, New Jersey, which is adjacent to GPU Nuclear's Oyster Creek Nuclear Generating Station, for which such turbine units provide backup and emergency A/C power supply; and (2) certain laboratory services to JCP&L, Met Ed and PennElec in support of the operation of their generation stations, transmission and distribution divisions, and other non-nuclear functions.

CNG Transmission Corporation, et al. (770–7722)

CNG Transmission Corporation ("Transmission"), 445 West Main Street, Clarksburg, West Virginia 26301 and The Peoples Natural Gas Company ("Peoples"), 625 Liberty Ave., Pittsburgh, Pennsylvania 15222–3199, wholly-owned subsidiary companies of Consolidated Natural Gas Company, a registered holding company, have filed an application-declaration under sections 9(a), 10, and 12(d) of the Act and Rules 43 and 44 thereunder.

Transmission and Peoples propose that Peoples exchange all of its natural gas properties within and around the North Summit Pool located in Fayette County, Pennsylvania for all of Transmission's natural gas properties within and around the Jacksonville Pool, located in Indiana County, Pennsylvania. Transmission states that it desires to acquire all outstanding oil and gas interest and gas storage rights in the North Summit Pool for the purpose of converting it to a storage pool. Peoples states that it would like to expand its gas production facilities and reserves in the Jacksonville Pool which is nearer to its market.

No other consideration is proposed to be given in connection with this exchange. The properties to be transferred by Transmission have a net book value of approximately $139,300 and consist of oil and gas leases, pipeline rights of way, production well leases and unit operating agreements located in the Jacksonville Pool, as well as two production wells located in Armstrong County, just outside of that pool. The properties to be transferred by Peoples have a net book value of approximately $35,000 and consist of the same type of producing properties as it is receiving from Transmission. Transmission and Peoples state that the properties proposed to be exchanged have, in the aggregate, approximately equal amounts of natural gas reserves and approximately equal market values.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–28540 Filed 12–6–89; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 1143]

Extension of the Restriction on the Use of the United States Passport for Travel To, In, or Through Libya

On December 11, 1981, pursuant to the authority of 22 U.S.C. 211a and Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.73(a)(3), the use of the United States passport for travel to, in, or through Libya was restricted. These restrictions have subsequently been extended on November 29, 1982 (47 FR 54888), November 29, 1983 (48 FR 55529), November 29, 1984 (49 FR 47585), November 25, 1985 (50 FR 49809), December 9, 1986 (51 FR 44855), December 10, 1987 (52 FR 46876), and December 8, 1988 (53 FR 49633). These actions were required by the unsettled relations between the United States and the Government of Libya and threats of hostile acts against Americans in Libya.

The Government of Libya still maintains a decidedly anti-American stance and continues to emphasize its willingness to direct hostile acts against the United States and its nationals. The American Embassy in Tripoli remains closed, thus preventing the United States from providing routine diplomatic protection or consular assistance to Americans who may travel to Libya.

In light of these events and circumstances, I have determined that Libya continues to be an area "* * * where there is imminent danger to the public health or physical safety of United States travelers."

Accordingly, United States passports shall remain invalid for use in travel to, in, or through Libya unless specifically validated for such travel under the authority of the Secretary of State.

The Public Notice shall be effective upon publication in the **Federal Register** and shall expire at the end of one year unless sooner extended or revoked by Public Notice.

Dated: December 2, 1989.

Lawrence S. Eagleburger,

Acting Secretary of State.

[FR Doc. 89-28570 Filed 12-6-89; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 89-14]

Lower Mississippi River Waterway Safety Advisory Committee; Aids to Navigation Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Aids to Navigation Subcommittee of the Lower Mississippi River Waterway Safety Advisory Committee. The meeting will be he1d on Thursday, December 14, 1989 at the Crescent River Port Pilots' Office, 409 Belle Chasse Highway South, Belle Chasse, Louisiana. The meeting is scheduled to begin at 9:00 a.m. The agenda for the meeting consists of the following items:

1. European Vessel Traffic Services.
2. Buoys at Cubits Gap.
3. Recommendations for the New Orleans Vessel Traffic Service.
4. Adjournment.

Attendance is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander Gary A. Bird, USCG, Executive Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), Room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396, telephone number (504) 589-3074.

Dated: November 28, 1989.

W.F. Merlin,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 89-28592 Filed 12-6-89; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review; Charlotte/Douglas International Airport, Charlotte, NC

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for Charlotte/Douglas International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96-193) (hereinafter referred to as "the Act") and 14 CFR part 150 by the City of Charlotte. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR part 150 for Charlotte/Douglas International Airport were in compliance with applicable requirements effective July 11, 1989. The proposed noise compatibility program will be approved or disapproved on or before May 19, 1990.

EFFECTIVE DATE: The effective date of the start of FAA's review of the noise compatibility program is November 20, 1989. The public comment period ends January 19, 1990.

FOR FURTHER INFORMATION CONTACT: Thomas M. Roberts; Atlanta Airports District Office; 1680 Phoenix Parkway, Suite 101; Atlanta, Georgia 30349, Telephone FTS 257-9306 or 404/994-5306. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for Charlotte/Douglas International Airport which will be approved or disapproved on or before May 19, 1990. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program for Charlotte/Douglas International Airport, effective on November 20, 1989. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before May 19, 1990.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden in interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations.

Federal Aviation Administration, 800 Independence Avenue SW., Room 617, Washington, DC 20591

Atlanta Airports District Office, FAA, 1680 Phoenix Parkway, Suite 101, Atlanta, GA 30349

Office of the Aviation Director, Charlotte/Douglas International Airport, 6501 Old Dowd Road, Terminal Building, Charlotte, NC 28214

Questions may be directed to the individual named above under the heading, **"FOR FURTHER INFORMATION CONTACT."**

Issued in Atlanta, Georgia.

Samuel F. Austin,

Manager, Atlanta Airports District Office.

[FR Doc. 89-28562 Filed 12-6-89; 8:45 am]

BILLING CODE 4910-13-M

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Jackson International Airport, Jackson, MS

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Jackson Municipal Airport Authority for the Jackson International Airport (formerly Jackson Municipal Airport), under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for the Jackson International Airport (formerly Jackson Municipal Airport) under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before May 21, 1990.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is November 22, 1989. The public comment period ends January 21, 1990.

FOR FURTHER INFORMATION CONTACT: Elton E. Jay, Civil Engineer, Jackson Airports District Office, 120 North Hangar Drive, Suite B, Jackson, Mississippi 39208–2306; telephone no. (601) 965–4628. Comments on the proposed noise compatibility program should also be submitted to this address.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the Jackson International Airport (formerly Jackson Municipal Airport) are in compliance with applicable requirements of part 150, effective November 22, 1989. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before May 21, 1990. This notice also announces the availability of this program for public review and comment.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The Jackson Municipal Airport Authority submitted to the FAA on November 3, 1989, noise exposure maps, descriptions and other documentation which were produced during preparation of the Jackson Municipal Airport FAR part 150 Airport Noise Compatibility Study from January 1987 through November 1989. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and the surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Jackson Municipal Airport Authority. The specific maps under consideration are 1987 Contours With Existing Off-airport Land Use and 1992 Contours With Existing Off-airport Land Use. The FAA has determined that these maps for the Jackson International Airport (formerly Jackson Municipal Airport) are in compliance with applicable requirements. This determination is effective on November 22, 1989. FAA's determination on an airport operator's noise exposure maps is limited to finding that the maps were developed in accordance with the procedure contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land-use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for the Jackson International Airport (formerly Jackson Municipal Airport), also effective on November 22, 1989. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before May 21, 1990.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land-use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., Room 617, Washington, DC 20591

Airports District Office, 120 North Hangar Drive, Suite B, Jackson, Mississippi 39208-2306

Jackson Municipal Airport Authority, Post Office Box 98108, Jackson, Mississippi 39298-8109

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Jackson, Mississippi, November 22, 1989.

Newton L. Taylor,

Manager, Jackson Airports District Office.

[FR Doc. 89-28560 Filed 12-6-89; 8:45 am]

BILLING CODE 4910-13-M

Noise Exposure Map Notice; Key West International Airport Key West, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Monroe County Board of County Commissioners for Key West International Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96-193) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is November 14, 1989.

FOR FURTHER INFORMATION CONTACT: Tommy J. Pickering, Airport Planning Specialist, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, FL, telephone (407) 648-6583.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Key West International Airport are in compliance with applicable requirements of part 150, effective November 14, 1989.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Monroe County Board of County Commissioners. The specific maps under consideration are current NEM entitled "1987 Existing Noise Exposure Map" and Five-year NEM entitled "1992 Noise Exposure Map" in the submission. The FAA has determined that the maps for Key West International Airport are in compliance with applicable requirements. This determination is effective on November 14, 1989. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished. Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Indpendence Avenue, SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, FL 32827

Airport Director's Office, Room 203, Key West International Airport, 3491 South Roosevelt Boulevard, Key West, Florida 33040.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida, November 14, 1989.

Billy J. Langley,

Acting Manager, Orlando Airports District Office.

[FR Doc. 89-28556 Filed 12-6-89; 8:45 am]

BILLING CODE 4910-13-M

Noise Exposure Map Notice Marathon Airport, Marathon, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Monroe County Board of County Commissioners for Marathon Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is November 14, 1989.

FOR FURTHER INFORMATION CONTACT: Tommy J. Pickering, Airport Planning specialist, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, FL, telephone (407) 648-6583.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Marathon Airport are in compliance with applicable requirements of part 150, effective November 14, 1989.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such

operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatability program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Monroe County Board of County Commissioners. The specific maps under consideration are titled "1987 Existing Noise Exposure Map" and "1991 Noise Exposure Map" in the submission. The FAA has determined that these maps for Marathon Airport are in compliance with applicable requirements. FAA's determination on airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute aproval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, FL 32827

Airport Director's Office, Room 203, Key West International Airport, 3491 South Roosevelt Boulevard, Key West, FL 33040

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida, November 14, 1989.

Billy J. Langley,

Acting Manager, Orlando Airports District Office.

[FR Doc. 89-28557 Filed 12-6-89; 8:45 am]

BILLING CODE 4910-13-M

Termination of Review of Noise Compatibility Program; Orlando International Airport, Orlando, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces it has terminated its review of the noise compatibility program at the request of the Greater Orlando Aviation Authority, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96-193) and 14 CFR part 150.

EFFECTIVE DATE: The effective date of the FAA's termination of its review of the Orlando International Airport Noise Compatibility Program is November 22, 1989.

FOR FURTHER INFORMATION: Tommy J. Pickering, Federal Aviation Administration, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, Florida 32827-5096, (407) 648-6583.

SUPPLEMENTARY INFORMATION: On June 16, 1989, the FAA determined that the noise exposure maps submitted by the Greater Orlando Aviation Authority were in compliance with applicable requirements and began its review of the noise compatibility program. On November 17, 1989, the Greater Orlando Aviation Authority requested that FAA suspend its review and processing of the noise compatibility program to allow a additional time to finalize planned future operational procedures in coordination with the Air Traffic Control Tower (ATCT) at Orlando International Airport. When the FAA has received revised documentation, FAA will reissue appropriate notice establishing new review and approval periods in accordance with section 150.33(e) of 14 CFR part 150.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida, November 22, 1989.

Billy J. Langley,

Acting Manager, Orlando Airports District Office.

[FR Doc. 89-28558 Filed 12-6-89; 8:45 am]

BILLING CODE 4910-13-M

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Richard Lloyd Jones, Jr. Airport, Tulsa, OK

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Tulsa Airports Improvements Trust for Richard Lloyd Jones, Jr. Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96-193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Richard Lloyd Jones, Jr. Airport under part 150 in conjunction with the noise exposure maps and that this program will be approved or disapproved on or before May 21, 1990.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and the start of its review of the associated noise compatibility program is November 22, 1989. The public comment period ends January 21, 1990.

FOR FURTHER INFORMATION CONTACT: Donald C. Harris, Department of Transportation, Federal Aviation Administration, Fort Worth, Texas, 76193-0612, (817) 624-5609. Comments on the proposed noise compatibility

program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Richard Lloyd Jones, Jr. Airport are in compliance with applicable requirements of part 150, effective Novmeber 22, 1989. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before May 21, 1990. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

Tulsa Airports Improvement Trust submitted to the FAA on November 18, 1988 noise exposure maps, descriptions and other documentation which were produced during the development of FAR Part 150 Noise Exposure and Land Use Compatibility Program. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Tulsa Airports Improvement Trust. The specific maps under consideration are Figure 19, Existing Noise Exposure Map-1987, with Existing Land Use (page 63) and Figure 25, Future Noise Exposure Map-1993, with Existing Land Use (page 90) in the submission.

The FAA has determined that these maps for Richard Lloyd Jones, Jr. Airport are in compliance with applicable requirements. This determination is effective on November 22, 1989. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information, or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Richard Lloyd Jones, Jr. Airport, also effective on November 22, 1989. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before May 21, 1990.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Airports Division, ASW-600, Fort Worth, Texas 76193-0600

Tulsa Airports Improvement Trust, Richard Lloyd Jones, Jr. Airport, Jenks, Oklahoma 74037

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Fort Worth, Texas, November 22, 1989.

Wm. Jack Sasser,

Manager, Airports Division.

[FR Doc. 89-28559 Filed 12-6-89; 8:45 am]

BILLING CODE 4910-13-M

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Southwest Florida Regional Airport, Fort Myers, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Lee County, Florida for the Southwest Florida Regional Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for the Southwest Florida Regional Airport under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before May 16, 1990.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is November 17, 1989. The public comment period ends January 16, 1990.

FOR FURTHER INFORMATION CONTACT: Tommy J. Pickering, Federal Aviation Administration, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, Florida 32827–5096, (407) 648–6583. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the Southwest Florida Regional Airport are in compliance with applicable requirements of part 150, effective November 17, 1989. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before May 16, 1990. This notice also announces the availability of this program for public review and comment.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

Lee County, Florida submitted to the FAA on October 5, 1989 noise exposure maps, descriptions and other documentation which were produced during development of the FAR part 150 Noise Compatibility study between October 3, 1984 and October 4, 1989. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Lee County, Florida. The specific maps under consideration are "1987 Existing Noise Contours" and "1992 Abated Noise Contours" in the submission. The FAA has determined that these maps for the Southwest Florida Regional airport are in compliance with applicable requirements. This determination is effective on November 17, 1989. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for the Southwest Florida Regional Airport, also effective on November 17, 1989. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before May 16, 1990.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., Room 617, Washington, DC 20591.

Federal Aviation Administration, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, Florida 32827–5096.

Lee County Department of Airports, 16000 Chamberlin Parkway, SE., Fort Myers, Florida 33913.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT:**

Issued in Orlando, Florida, November 17, 1989.

James E. Sheppard,

Manager, Orlando Airports District Office.

[FR Doc. 89–28555 Filed 12–6–89; 8:45 am]

BILLING CODE 4910–13–M

Approval of Noise Compatibility Program; Spirit of St. Louis Airport, Chesterfield, MO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by St. Louis County under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14

CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980) On April 28, 1989, the FAA determined that the noise exposure maps submitted by St. Louis County under part 150 were in compliance with applicable requirements. On October 23, 1989 the Associate Administrator for Airports approved the Spirit of St. Louis noise compatibility program. Most of the recommendations of the program were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Spirit of St. Louis noise compatibility program is October 23, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Ornes, Federal Aviation Administration, Airports Division, 601 E. 12 St., Kansas City, MO 64106, (Telephone (816) 426–6614). Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Spirit of St. Louis Airport, effective October 23, 1989.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its jusdgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act and is limited to the following determinations:

(a) The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

(b) Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

(c) Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government. and

(d) Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Regional Office in Kansas City, Missouri.

St. Louis County submitted to the FAA on January 19, 1988, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from June 18, 1987 through April 28, 1989. The Spirit of St. Louis Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on April 28, 1989. Notice of this determination was published in the **Federal Register** on May 19, 1989.

The Spirit of St. Louis Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1993. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on April 28, 1989 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained eighteen (18) proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Associate Administrator for Airports effective October 23, 1989.

Outright approval was granted for seventeen (17) of the specific program elements. The approved program elements include eight (8) noise abatement measures and nine (9) land use management measures designed to remedy existing noise problems and prevent future noncompatible land uses around the airport. One measure, the establishment of height and hazard zoning, was disapproved for purposes of FAR part 150. While the FAA encourages this type of zoning for safety reasons, it is not a noise mitigation measure under part 150.

These determinations are set forth in detail in a Record of Approval endorsed by the Associate Administrator for Airports on October 23, 1989. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Spirit of St. Louis Airport, Chesterfield, MO.

Issued in Kansas City, Missouri, November 20, 1989.

Michael J. Faltermeier,

Acting Manager, Airports Division, ACE–600.

[FR Doc. 89–28561 Filed 12–6–89; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Bonner County, ID

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The Federal Highway Administration is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a

proposed highway project in Bonner County, Idaho.

FOR FURTHER INFORMATION CONTACT: Robert Clour, Assistant Division Administrator, Federal Highway Administration, 3050 Lakeharbor Lane, Suite 126, Boise, Idaho 83703, telephone: (208) 334–1843; or Charles Rountree, Idaho Transportation Department, P.O. Box 7129, Boise, Idaho 83707–1129, telephone (208) 334–8484.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration in cooperation with the Idaho Transportation Department will prepare an Environmental Impact Statement (EIS) on a proposal to improve U.S. Highway 95 in and around the City of Sandpoint, Idaho. The proposed highway location alternatives vary in length from two to nine miles long and will provide a minimum of two-travel lanes.

The improvement is considered necessary to relieve current and projected traffic congestion on U.S. Highway 95. Alternatives under consideration include (1) taking no action and (2) various location options within the study corridor.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Scoping for the project consists of a series of public meetings which began on February 23, 1989, and a drop-in information office in Sandpoint which opened November 7, 1988. Another public meeting will be held and a formal scoping meeting will be held with involved or interested government agencies and private organizations. A public location hearing will be held upon completion of the public participation process and circulation of the Draft Environmental Impact Statement. Public notice will be posted as to the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the Federal Highway Administration or Idaho Transportation Department at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: November 28, 1989.

Robert G. Clour,

Assistant Division Administrator, Boise, Idaho.

[FR Doc. 89–28585 Filed 12–6–89; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement; Fresno, Clovis, and Fresno County, CA

AGENCY: Federal Highway Administration (FHWA), Department of Transportation.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Fresno County, California.

FOR FURTHER INFORMATION CONTACT: Mr. John R. Schultz, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95812–1915. Telephone: (916) 551–1140.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to construct a new 8.8-mile freeway on Route 168 from future Route 180 in Fresno to Temperance Avenue in Clovis, California (post miles R0.0 to R8.8). Route 168 is a principal arterial in Fresno County that is a major component of the Fresno-Clovis Metropolitan Area (FCMA) circulation system, and a principal travel route for recreational, commercial, and commute traffic between the FCMA and its rural service area to the north and east. Without improvements, average daily traffic (ADT) for the Route 168 urban corridor is estimated to be as high 65,500 by 2010 with severe congestion.

Alternatives being studied include:

1. *New Freeway on Adopted Alignment.* This would connect future Route 180 to Temperance Avenue by a new 4- to 8-lane freeway on an adopted alignment beginning at future Route 180 between Cedar and Maple avenues, running north to Shaw Avenue, and then northeast to Temperance Avenue north of Tollhouse Road.

2. *Improve Existing Route 168.* This alternative involves modifications to Shaw Avenue, Clovis Avenue, and Tollhouse Road between Route 41 and Clovis Avenue. Two variations of the alternative are being evaluated: modifications only to the existing Route 168 and modifications to other principal north-south and east-west arterials in the general Route 168 corridor.

3. *New Freeway In Eastern Corridor.* This would connect the future Route 180 freeway with Temperance Avenue north of Herndon Avenue in a corridor on the eastern side of the FCMA. Possible alignments for this alternative are being studied in a corridor that is bounded by Fowler Avenue on the west and Temperance or Locan avenues on the east.

4. *Transportation System Management (TSM).* This alternative would consider a variety of strategies designed to improve traffic flows along the major east-west and north-south arterials in the route 168 corridor without construction of costly roadway modifications. Strategies being studied for this alternative include improved public transit, carpools, vanpools, traffic signalization, and lane restriping.

5. *Mass Transit.* This alternative would examine strategies to divert people from automobiles to mass transit, reducing traffic capacity demands in the existing Route 168 corridor.

6. *No Build.* This alternative would provide no improvements to Route 168 in the project area.

To ensure that the full range of issues related to this proposed action is addressed and all significant issues identified, comments and suggestions are invited from all interested parties. If you have any information regarding historic resources, endangered species, or other sensitive issues which could be affected by this project, please notify this office. Also, please indicate if you would be interested in being notified at the completion of historic resource studies.

Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on November 29, 1989.

John R. Schultz,

District Engineer, Sacramento, California.

[FR Doc. 89–28586 Filed 12–6–89; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement: Mendocino County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project in Mendocino County, California.

FOR FURTHER INFORMATION CONTACT: Glenn Clinton, District Engineer, Federal Highway Administration (FHWA), P.O. Box 1915, Sacramento, CA 95812–1915, Telephone (916) 551–1314.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to construct an eight mile long freeway to bypass the City of Willits, located in Mendocino County, California.

Alternatives under consideration include: Taking no action, and several alternatives involving construction on new alignments to the east or west of Willits, including one alignment through the center of Little Lake Valley.

A bypass, if constructed, would relieve congestion on existing Route 101, which serves as the primary arterial of the City of Willits for a distance of three miles.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. In addition, scoping meetings will be held during December 1989 and January 1990. Public notice will be given of public meetings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal, Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: November 29, 1989.

Glenn Clinton,

District Engineer, Sacramento, California.

[FR Doc. 89–28587 Filed 12–6–89; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 33–89]

Treasury Notes, Series AG–1991

Washington, November 29, 1989.

The Secretary announced on November 28, 1989, that the interest rate on the notes designated Series AG–1991, described in Department Circular—Public Debt Series—No. 33–89 dated November 24, 1989, will be 7¾ percent. Interest on the notes will be payable at the rate of 7¾ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89–28549 Filed 12–6–89; 8:45 am]

BILLING CODE 4810–40–M

[Supplement to Department Circular—Public Debt Series—No. 34–89]

Treasury Notes, Series J–1995

Washington, November 30, 1989.

The Secretary announced on November 29, 1989, that the interest rate on the notes designated Series J–1995, described in Department Circular—Public Debt Series—No. 34–89 dated November 23, 1989, will be 7¾ percent. Interest on the notes will be payable at the rate of 7¾ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89–28550 Filed 12–6–89; 8:45 am]

BILLING CODE 4810–40–M

Office of Thrift Supervision

[AC–12]

Bullitt Federal Savings & Loan Association, Shepherdsville, KY (OTS No. 7037); Final Action Approval of Conversion Application

Date: November 20, 1989.

Notice is hereby given that on November 9, 1989, the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him or his designee, approved the application of Bullitt Federal Savings and Loan Association, Shepherdsville, Kentucky for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, and District Director, Office of Thrift Supervision, Cincinnati District Office, 2000 Atrium TWO, 221 E. 4th Street, Cincinnati, Ohio 45202.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89–28514 Filed 12–6–89; 8:45 am]

BILLING CODE 6720–01–M

[AC–10]

Home Savings Bank, S.A., Appleton, WI (OTS No. 0177); Final Action Approval of Conversion Application

Dated: November 2, 1989.

Notice is hereby given that on October 17, 1989, the General Counsel of the Office of Thrift Supervision, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Home Savings Bank, S.A., Appleton, Wisconsin, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, and Supervisory Agent, Office of Thrift Supervision, Chicago District Office, 11 East Wacker Drive, Chicago, Illinois 60601.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89–28515 Filed 12–6–89; 8:45 am]

BILLING CODE 6720–01–M

[AC–11]

Mid America Federal Savings Bank, Clarendon Hills, IL (OTS No. 2098; Final Action Approval of Conversion Application

Date: November 20, 1989.

Notice is hereby given that on November 2, 1989, the Chief Counsel, Office of the Thrift Supervision, acting pursuant to the authority delegated to him or his designee, approved the application of Mid America Federal Savings Bank, Clarendon Hills, Illinois, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and District Director, Office of Thrift Supervision, Chicago District Office, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-28516 Filed 12-6-89; 8:45 am]

BILLING CODE 6720-01-M

[AC-13]

Peoples Building & Savings Association, Troy, OH, (OTS No. 0993); Final Action Approval of Conversion Application

Date: November 20, 1989.

Notice is hereby given that on November 6, 1989, the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him or his designee, approved the application of Peoples Building and Savings Association, Troy, Ohio for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552 and District Director, Office of Thrift Supervision, Cincinnati District Office, 2000 Atrium Two, 221 E. Fourth Street, Cincinnati, Ohio 45202.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-28517 Filed 12-6-89; 8:45 am]

BILLING CODE 6720-01-M

[AC-15]

Catano Federal Savings Bank, Catano, PR (OTS No. 7854); Final Action Approval of Conversion Application

Date: November 20, 1989.

Notice is hereby given that on November 13, 1989, the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him or his designee, approved the application of Catano Federal Savings Bank, Catano, Puerto Rico for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, and District Director, Office of Thrift Supervision, New York District Office, One World Trade Center, Floor 103, New York, New York 10048.

By the Office of Thrift Supervision

M. Danny Wall,

Director.

[FR Doc. 89-28518 Filed 12-6-89; 8:45 am]

BILLING CODE 6720-01-M

[AC-14]

Financial Federal Savings & Loan Association, Long Island City, NY (OTS No. 5182); Final Action Approval of Conversion Application

Date: November 20, 1989.

Notice is hereby given that on November 13, 1989, the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him or his designee, approved the application of Financial Federal Savings and Loan Association, Long Island City, New York, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, and District Director, Office of Thrift Supervision, New York District Office, One World Trade Center, Floor 103, New York, New York 10048.

By the Office of Thrift Supervision

M. Danny Wall,

Director.

[FR Doc. 89-28519 Filed 12-6-89; 8:45 am]

BILLING CODE 6720-01-M

[AC-18]

Home Federal Savings & Loan Association, Kings Mountain, NC (OTS No. 5385); Final Action Approval of Conversion Application

Date: November 22, 1989.

Notice is hereby given that on November 13, 1989, the Chief Counsel, acting pursuant to the authority delegated to him or his designee, approved the application of Home Federal Savings and Loan Association, Kings Mountain, North Carolina, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552 and District Director, Office of Thrift Supervision, Atlanta District Office, 1475 Peachtree Street, N.E., Atlanta, Georgia 30309.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-28520 Filed 12-6-89; 8:45 am]

BILLING CODE 6720-01-M

[AC-16]

Metropolitan Federal Savings & Loan Association of Seattle, Seattle, WA (OTS No. 3373); Final Action Approval of Conversion Application

Date: November 22, 1989.

Notice is hereby given that on November 13, 1989, the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him or his designee, approved the application of Metropolitan Federal Savings & Loan Association of Seattle, Seattle, Washington for permission to convert to the stock form of organization. Copies of the application are available for inspection at the secretariat, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, and District Director, Office of Thrift Supervision, Seattle District Office, 1501 4th Avenue, 19th Floor, Seattle, Washington 98101-1693.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-28521 Filed 12-6-89; 8:45 am]

BILLING CODE 6720-01-M

[AC-17]

Workmen's Federal Savings Bank, Mt. Airy, NC (OTS No. 1327); Final Action Approval of Conversion Application

Date: November 22, 1989.

Notice is hereby given that on November 13, 1989, the Chief Counsel, Office of the Thrift Supervision, acting pursuant to the authority delegated to him or his designee, approved the application of Mid America Federal Savings Bank, Clarendon Hills, Illinois, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, and District Director, Office of Thrift Supervision, Atlanta District Office, 1475 Peachtree Street NE., Atlanta, Georgia 30309.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-28522 Filed 12-6-89; 8:45 am]

BILLING CODE 6720-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 234
Thursday, December 7, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, December 19, 1989.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Application for contract designation submitted by the Chicago Board of Trade to trade options on Oats futures

Application for contract designation submitted by the Chicago Mercantile Exchange to trade options on physical gold

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89–28707 Filed 12–5–89; 12:53 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, December 19, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89–28708 Filed 12–5–89; 12:53 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, January 4, 1990.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Proposed rules on Dual Trading
Report on Broker Associations

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89–28709 Filed 12–5–89; 12:53 pm]

BILLING CODE 6351–01–M

FEDERAL COMMUNICATIONS COMMISSION

FCC to Hold Open Commission Meeting, Tuesday, December 12, 1989

December 5, 1989.

The Federal Communications Commission will hold an Open Meeting on Tuesday, December 12, 1989. It is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC. Seven matters will be considered, including three Private Radio, two Common Carrier, and two Mass Media items, in the order set forth below.

Agenda, Item No., and Subject

Private Radio—1—Title: Amendment of Parts 0, 1, 2, and 95 of the Commission's Rules regarding the establishment of a Personal Emergency Locator Transmitter Service. Summary: The Commission will consider whether to propose to implement a new Personal Emergency Locator Transmitter Service for use by individuals in remote areas.

Common Carrier—2—Title: AT&T v. Northwestern Bell Tel. Co. (File No. E–88–21). Summary: The Commission will consider issues raised in AT&T's complaint against Northwestern Bell.

Common Carrier—3—Title: MCI Telecomm. Corp. v. Pacific Northwest Bell, *et al.* Summary: The Commission will consider issues raised in MCI's complaints against local exchange carriers.

Mass Media—4—Title: In the Matter of Competition, Rate Deregulation, and Commission's Policies Relating to the Provision of Cable Television Service. Summary: The Commission will consider issues relating to cable rates and competition in the cable and related industries.

Mass Media—5—Title: Notice of Apparent Liability for forfeiture of $4,000 issued to Paragon Communications, the operator of a cable television system serving Graham, Texas. Summary: The Commission will determine whether issuance of a $4,000 forfeiture is warranted, based on apparent violations of Section 76.605(a)(11) (cable television signal leakage) of the Commission's Rules.

Private Radio—6—Title: Application for review of monetary forefeiture imposed against Texidor Security Equipment, Inc., licensee of station KNDE–363 in the Business Radio Service. Summary: The Commission will consider a $1000 forfeiture imposed against Texidor Security Equipment, Inc., for violation of Section 90.403(e) of the Rules.

Private Radio—7—Title: Application for review of forfeiture imposed against amateur radio operator David B. Hodges. Summary: The Commission will consider whether to uphold a $1200 forfeiture against David B. Hodges for violation of Sections 97.84 and 97.125 of the Rules.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sarah Lawrence, Office of Public Affairs, Telephone number (202) 632–5050.

Issued: December 5, 1989.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 89–28756 Filed 12–5–89; 3:35 pm]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

PREVIOUSLY ANNOUNCED DATED AND TIME: Thursday, December 7, 1989, 10:00 a.m., Open Meeting.

THE FOLLOWING ITEM WAS DELETED FROM THE AGENDA: Drug Free Workplace Revised Instruction.

DATE AND TIME: Tuesday, December 12, 1989, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, December 14, 1989, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC. (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Draft Advisory Opinions
A. Draft AO 1989–29:
Edean S. Hayashida on behalf of GEM of Hawaii, Inc.
B. Draft AO 1989–30:
William C. Oldaker, Esquire on behalf of Senator Joseph R. Biden, Jr.
Proposed Allocation Regulations—"Consideration of Final Rules."
Proposed Final Repayment Determination and Statement of Reasons—Pete du Pont for President, Inc.
FY 1990 Management Plan
Attorney Grade Levels
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: (202) 376–3155.

Hilda Arnold,

Administrative Assistant, Office of the Secretariat, Federal Election Commission.

[FR Doc. 89–28739 Filed 12–5–89; 2:19 pm]

BILLING CODE 6715–01–M

FEDERAL TRADE COMMISSION

TIME AND DATE: 2:00 p.m., Thursday, December 7, 1989.

PLACE: Federal Trade Commission Building, Room 532, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED Portions open to public:

(1) Oral Argument in Kraft, Inc., Docket 9208.

Portions closed to the public:

(2) Executive Sesson to follow Oral Argument in Kraft, Inc., Docket 9208.

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Affairs: (202) 326–2179, Recorded Message: (202) 326–2711.

Donald S. Clark,

Secretary.

[FR Doc. 89–28757 Filed 12–5–89; 3:35 pm]

BILLING CODE 6750–01–M

Corrections

Federal Register
Vol. 54, No. 234
Thursday, December 7, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89N-0477]

Drug Export; Ortho™ HIV-1 Recombinant ELISA Test System

Correction

In notice document 89-26855 beginning on page 47572 in the issue of Wednesday, November 15, 1989, make the following correction:

On page 47573, in the first column, under **FOR FURTHER INFORMATION CONTACT:**, in the fourth and fifth lines, the phone number should read "301-295-8191".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89M-0455]

T Cell Sciences, Inc.; Premarket Approval of Cellfree® Interleukin-2 Receptor Bead Assay Kit

Correction

In document 89-26709 appearing on page 47574 in the issue of Wednesday, November 15, 1989, make the following correction:

In the first column, under **SUPPLEMENTARY INFORMATION**, in the third paragraph, in the second line, "CDRD" should read "CDRH".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket 89M-0356]

Newlensco; Premarket Approval of Classic Series ™ Models MP-1010, MP-1011, MP-1110, MP-1111, MP-1210, and MP-1410 Posterior Chamber Intraocular Lenses

Correction

In document 89-26710 beginning on page 47574 in the issue of Wednesday, November 15, 1989, make the following correction:

On page 47575, in the first column, under **Opportunity for Administrative Review**, in the ninth line, "part 21" should read "part 12".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89M-0456]

Oncor, Inc.; Premarket Approval of Oncor B/T Gene Rearrangement Test

Correction

In notice document 89-26771 beginning on page 47576 in the issue of Wednesday, November 15, 1989, make the following correction:

On page 47576, in the third column, under **SUMMARY:**, in the 12th line, "application" should read "applicant".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89M-0464]

N&N Contact Lens International, Inc.; Premarket Approval of Softouch (Ocufilcon C) Soft (Hydrophilic) Contact Lenses and Softouch Toric (Ocufilcon C) Soft (Hydrophilic) Contact Lenses

Correction

In document 89-26772 beginning on page 47577 in the issue of Wednesday, November 15, 1989, make the following correction:

On page 47577, in the second column, in the heading, the docket number should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89M-0458]

Surgidev Corp.; Premarket Approval of the Ultraviolet-Absorbing Posterior Chamber Intraocular Lenses Models BUV20-20A0, BUV20-20A4, UV20-20A4, BUV24A4, and LRUV20-24A4

Correction

In notice document 89-26714 appearing on page 47579 in the issue of Wednesday, November 15, 1989, make the following correction:

In the first column, under **FOR FURTHER INFORMATION CONTACT**, in the first line, "Crogdon" should read "Brogdon".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[OACT-025-N]

Medicare Program; Monthly Actuarial Rates, Supplementary Medical Insurance Premium Rate, and Catastrophic Coverage Premium Beginning January 1, 1990

Correction

In notice document 89-25508 beginning on page 43862 in the issue of Friday, October 27, 1989, make the following corrections:

1. On page 43864, in the second column, in paragraph 2., in the fourth line, "$8.75" should read "$8.57".

2. On page 43866, in Table 4, in the entry "Covered services (at level recognized):", in the fourth line, "Total services" should read "Group practice prepayment plans".

3. On the same page, in the same table, in the entry "Cost-sharing:", under "Coinsurance", in the fourth column, "-15.59" should read "-15.49".

4. On page 43867, in Table 5, under the heading "This projection", in the second, third, and fourth columns, remove "1989", "1990", and "1991".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-943-90-4214-11; IDI-05284]

Proposed Continuation of Withdrawals; Idaho

Correction

In notice document 89-26285 beginning on page 46991 in the issue of Wednesday, November 8, 1989, make the following correction:

On page 46992, in the second column, under the "Yellowjacket Administrative Site" in the third line, "NW¼SW¼ NE¼" should read "NW¼SW¼NW¼".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Ch. V

[No. 89-244]

Transfer and Recodification of Regulations Pursuant to Financial Institutions Reform, Recovery and Enforcement Act of 1989

Correction

In rule document 89-26716 beginning on page 49411 in the issue of Thursday, November 30, 1989, make the following correction:

On page 49545, in the third column, in the heading for **SUBCHAPTER D**, remove "AFFECTING" and insert "APPLICABLE TO".

BILLING CODE 1505-01-D

federal register

Thursday
December 7, 1989

Part II

Department of Labor

Employment and Training Administration

20 CFR Part 626 et al.

Job Training Partnership Act; Incentive Bonuses Under Title V

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 626, 627, 629, and 637

RIN 1205-AA75

Job Training Partnership Act; Incentive Bonuses Under Title V

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (DOL) is publishing a proposed rule to establish regulations for the incentive bonus programs under the new Title V of the Job Taining Partnership Act. Title V provides for incentive bonuses to States in which certain employable dependent individuals are successfully placed in jobs.

DATE: Comments on the proposed rule are invited from the public. Comments shall be received no later than February 5, 1990.

ADDRESS: Written comments shall be mailed to the Assistant Secretary for Employment and Training, Department of Labor, Room N4703, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Mr. Robert N. Colombo, Director, Office of Employment and Training Programs. Commenters wishing acknowledgement of receipt of their comments must submit them by certified mail, return receipt requested. Send comments regarding the paperwork reduction burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Assistant Secretary for Employment and Training, Department of Labor, Room N4703, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Mr. Robert N. Colombo, Director, Office of Employment and Training Programs; and to the Office of Information and Regulatory Affairs, Attention: Desk Officer for ETA, Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Colombo, Director, Office of Employment and Training Programs. Telephone: (202) 535-0577 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Introduction

On October 13, 1982, the Job Training Partnership Act (JTPA) was enacted to establish programs to prepare youth and unskilled adults for entry into the labor force and to afford job training to those economically disadvantaged individuals and other individuals facing serious barriers to employment, who are in special need of such training to obtain productive employment. Pub. L. 97-300, as amended; 29 U.S.C. 15 *et seq.*

Title I of JTPA sets forth general requirements for programs under JTPA, as well as some requirements for State operation of programs under JTPA. Title II of JTPA provides requirements for State operation of adult and youth programs under JTPA. Title III of JTPA provides for operation of State and local programs of employment and training assistance for dislocated workers. Title IV provides requirements for special programs for targeted groups, such as Native Americans and migrant farmworkers; as well as for the Job Corps, veterans and other specialized programs.

On November 7, 1988, Congress enacted the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, Pub. L. 100-628, 102 Stat. 3224. Subtitle B of Title VII of Pub. L. 100-628 is the Jobs for Employable Dependent Individuals Act (Act), 102 Stat. at 3248. The Act amends JTPA by adding a new JTPA Title V and redesignating the preexisting Title V and later portions of JTPA. The new JTPA Title V (29 U.S.C. 1791 *et seq.*) establishes an incentive bonus program for States which provide services to certain categories of individuals and move these individuals off various assistance programs and into employment.

Incentive Bonus Program

Section 510(e) of JTPA requires the Secretary of Labor to issue regulations with respect to title V (29 U.S.C. 1791i(e)). Those regulations are proposed by this document and are discussed below.

Allotments to States

Section 637.10 contains the provision added to JTPA by section 714(d)(2) of the Act (JTPA section 3(e)(2); 29 U.S.C. 1502(e)(2)) that no funds appropriated to carry out programs under Title V may be used for this purpose unless the total funds appropriated for Title II-A under JTPA in the same program year exceed the previous year's appropriation plus an amount equal to any increase in the consumer price index. Further, section 714(d)(2) of the Act amends JTPA to authorize the appropriation of funds only for fiscal years 1990 through 1994 (JTPA Section 3(e)(1); 29 U.S C. 1502(e)(1)). Therefore, there is currently no appropriation for the implementation of programs under Title V and no funds are assured in future fiscal years.

Notice of Intent to Participate

Section 637.11 provides that any State desiring to participate in programs under Title V shall submit a notice of intent to participate to the Secretary of Labor (Secretary) at least 30 days before the beginning of its first program year (July 1-June 30) of participation, i.e., by June 1. These notices shall be in letter form and shall be developed in accordance with instructions issued by the Secretary.

Even though funds may not be available under Title V, the Department of Labor (Department or DOL) will accept notices of intent to participate from States for program year (PY) 1990 (July 1, 1990-June 30, 1991). This will enable States to begin serving eligible individuals and collecting necessary data.

Beginning on July 1 of the program year following its submission of its notice of intent to participate, the State may begin counting those eligible individuals who complete the participation eligibility criteria established at § 637.15. For those States submitting notices of intent to participate for PY 1990, completion of all activities required for an incentive bonus must occur after July 1, 1990 and prior to June 30, 1991 in order for such individuals to be considered in determining the State's incentive bonus.

Incentive Bonus Program Applications

Section 637.12 provides that an Incentive Bonus Program Application shall be submitted by any State seeking an incentive bonus payment under this program. The application shall be developed in accordance with instructions issued by the Secretary and shall be submitted no later than August 31 following the end of the program year for which the bonus is being claimed. This application shall contain a certification by the State that documentation is available to support the eligibility of each individual claimed for the bonus. In addition, any State wishing to participate in this incentive bonus program must have a written procedure for establishing eligibility and tracking individuals who are eligible to be counted for the bonus. This procedure must be provided to the Secretary no later than March 31 of the State's first program year of participation.

Since PY 1990 is the first program year in which States may participate in this program, the first application for bonuses shall be submitted no later than

August 31, 1991. However, funds may not be available to honor any bonuses at that time unless funds for this program have been appropriated.

Review and Approval of Applications for Incentive Bonus Payments

Section 637.13 provides that the Secretary shall review applications and shall verify their accuracy using a sampling methodology. If more than 10 percent of the application amount sampled contains questioned information, however, the State must review all the information in such application and resubmit it. The Secretary shall accept the State's determination of an individual's eligibility to be counted for the purpose of bonus determination unless the Secretary establishes that such individual is not eligible.

Startup Grants

Section 637.14 provides that States may apply for startup funds no later than 120 days before the beginning of the first program year of the State's participation. The Secretary shall determine the amount of the startup grant based on the need demonstrated in the application. No funds are currently available for startup grants. The Department shall notify the States when such funds become available.

Distribution of Incentive Funds

Section 637.18 provides that States shall distribute not less than 85 percent of the incentive bonuses received to participating SDAs by an equitable method of distribution which is based on an agreement between the Governor and the Service Delivery Areas that reflects the degree to which the effort of the SDA contributed to the State's qualification for incentive bonus funds. The SDAs, in turn, should consider distributing funds, other than those reserved for administrative costs at the SDA level, equitably among service deliverers within the service delivery area, including participating State and local agencies, and community-based organizations that demonstrated effectiveness in delivering the employment and training services to eligible individuals who were claimed for incentive bonus purposes.

Subpart D—Data Collection

Separate regulations under this subpart are expected to be issued jointly by the Departments of Labor, Health and Human Services, and the Interior, as required by section 509(b) of JTPA, as amended by section 712(a)(3) of the Act (29 U.S.C 1791h(b)) on or before March 1, 1990 Representatives from these Departments have established a work group which has been charged with the responsibility for these regulations. The work group will address the confidentiality of the data and information necessary to fulfill the requirements of this program, which will be shared among the three Departments.

Regulatory Impact

The rule affects only States and service delivery areas which receive funds under the Job Training Partnership Act. It will not have the financial or other impact to make it a major rule, and preparation of a regulatory impact analysis is unnecessary. See E.O. 12291, 5 U.S.C. 601 note.

The Department of Labor has certified to the Chief Counsel for Advocacy, Small Business Administration, that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

Paperwork Reduction Act

Public reporting burden for the collection of information is estimated to average two hours per individual claimed in each response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Assistant Secretary for Employment and Training, Department of Labor, Room N4703, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Mr. Robert N. Colombo, Director, Office of Employment and Training Programs; and to the Office of Information and Regulatory Affairs, Attention: Desk Officer for ETA, Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Catalog of Federal Domestic Assistance Number

This program is listed in the Catalog of Federal Domestic Assistance at No. 17–250, "Job Training Partnership Act (JTPA)" (JTPA Titles I and II Programs).

List of Subjects in 20 CFR Parts 626 and 637

Grant programs, Labor, Manpower training programs, Dislocated worker programs.

Proposed Rule

Accordingly, it is proposed that chapter V of title 20, Code of Federal Regulations, be amended as follows:

PART 626—INTRODUCTION TO THE REGULATIONS UNDER THE JOB TRAINING PARTNERSHIP ACT

1. The Authority citation for Part 626 is revised to read:

Authority: 29 U.S.C. 1579(a); sec. 6305(f), Pub. L. 100-418, 102 Stat. 1107; 29 U.S.C. 1791i(e).

2. In § 626.3, the consolidated table of contents for the Job Training Partnership Act regulations is amended as follows:

(a) By removing the reference to "Part 629—General Provisions Governing Programs Under Titles I, II, and III of the Job Training Partnership Act" and adding in lieu thereof a reference to "Part 629—General Provisions Governing Programs Under Titles I, II, III and V of the Job Training Partnership Act"; and

(b) By removing the entry "Parts 637–638—[Reserved]" adding in lieu thereof the following:

* * * * *

Sec. 626.3 Table of Contents for the regulations under the Job Training Partnership Act.

* * * * *

PART 637—PROGRAMS UNDER TITLE V OF THE JOB TRAINING PARTNERSHIP ACT

Subpart A—General Provisions

Sec.
637.1 Scope and purpose.
637.2 Definitions.

Subpart B—Program Planning and Operation

637.10 Allotments to States.
637.11 Notice of intent to participate.
637.12 Incentive bonus program applications.
637.13 Review, verification and approval of applications for incentive bonus payments.
637.14 Startup grants.
637.15 Eligibility criteria for individuals eligible to be counted in determining incentive bonuses.
637.16 Determination of incentive bonus.
637.17 Determination of placement bonus base.
637.18 Use of incentive bonuses.

Subpart C—Additional Title V Administrative Standard Procedures

637.20 Management systems, reporting, and recordkeeping.
637.21 Federal monitoring and oversight.
637.22 Audits.

Subpart D—Data Collection [Reserved]

* * * * *

3. Section 626.4 is amended by removing from the introductory language the term "Titles I, II, and III of the Act" and adding in lieu thereof the term "Titles I, II, III, and V of the Act."

4. The authority citation for part 627 is revised to read.

Authority: 29 U.S.C. 1579(a); sec. 6305(f), Pub. L. 100-418, 102 Stat. 1107; 29 U.S.C. 1791i(e).

§ 627.4 [Amended]

5. Section 627.4(b) is amended by removing the number "501" and adding in lieu thereof the number "601."

6. The authority citation to part 629 is revised to read:

Authority: 29 U.S.C. 1579(a); sec. 6305(f), Pub. L. 100-418, 102 Stat. 1107; 29 U.S.C. 1791i(e).

7. The heading for part 629 is revised to read as follows:

PART 629—GENERAL PROVISIONS GOVERNING PROGRAMS UNDER TITLES I, II, III, AND V OF THE JOB TRAINING PARTNERSHIP ACT

* * * * *

8. Section 629.1 is amended as follows:

§ 629.1 [Amended]

(a) By removing from paragraphs (a), (b), and (e) the phrase "Titles I, II, and III" and adding in lieu thereof the phrase "Titles I, II, III and V"; and

(b) By adding a new paragraph (f), to read as follows:

§ 629.1 General program requirements.

* * * * *

(f) Each reference in this part to Title II of the Act or any part of Title II shall apply as well to Title V of the Act and to programs under part 637 of this chapter.

9. A new part 637 is added, to read as follows:

PART 637—PROGRAMS UNDER TITLE V OF THE JOB TRAINING PARTNERSHIP ACT

Subpart A—General Provisions

Sec.
637.1 Scope and purpose.
637.2 Definitions.

Subpart B—Program Planning and Operation

637.10 Allotments to States.
637.11 Notice of intent to participate.
637.12 Incentive bonus program applications.
637.13 Review, verification and approval of applications for incentive bonus payments.
637.14 Startup grants.
637.15 Eligibility criteria for individuals eligible to be counted in determining incentive bonuses.
637.16 Determination of incentive bonuses.
637.17 Determination of placement bonus base.
637.18 Use of incentive bonuses.

Subpart C—Additional Title V Administrative Standards and Procedures

637.20 Management systems, reporting and recordkeeping.
637.21 Federal monitoring and oversight.
637.22 Audits.

Subpart D—Data Collection [Reserved]

Authority: 29 U.S.C. 1579(a); 29 U.S.C. 1791i(e).

Subpart A—General Provisions

§ 637.1 Scope and purpose.

(a) This part implements title V of the Act which creates a program to provide incentive bonuses to States in which certain employable dependent individuals are successfully placed in jobs.

(b) This part applies to programs operated with funds under Title V of the Job Training Partnership Act.

§ 637.2 Definitions.

In addition to the definitions contained in sections 4, 301, 303(e), and 502 of the Act and in § 626.4 of this chapter, the following definitions apply to the administration of Title V of the Act and this part:

"Continuous employment" means gainful employment under which any wages or salaries are reportable for unemployment insurance purposes, when such wages or salaries are earned during a total of 4 out of 5 consecutive calendar quarters from employment with one or more employers (section 502(4)).

"Department (DOL)" means the United States Department of Labor.

"Disability assistance" means benefits offered pursuant to Title XVI of the Social Security Act, relating to the supplemental security income program (section 502(2)).

"Federal contribution" means the amount of the Federal component of cash payments to individuals within the participating State under welfare and/or disability assistance programs, including Part A of Title IV of the Social Security Act (section 502(6)).

"Head of household" means an individual physically residing in the same household with a dependent child or children related by birth, marriage or adoption. "JTPA" and "Act" mean the Job Training Partnership Act (29 U.S.C. 1501 *et seq.*), as amended.

"Layoff" means a reduction in force that is not the result of a permanent plant closure, but which results in an employment loss for an indefinite period (i.e., no date for the employees' return to work has been established).

"Long-term recipient" means an individual who has received welfare and/or disability assistance benefits for 24 months during the 28-month period immediately preceding application for programs under this part (section 502(3)).

"Marketable or significant work experience" means experience in a paid, unpaid, or supported work setting performing functions that resulted in the acquisition of skills, abilities, and knowledge sufficient to enhance an individual's employability to the extent that the individual can apply and be considered for unsubsidized employment positions on a competitive basis with other applicants. Such employment positions shall be considered to be those for which the participant would not have qualified prior to participation in programs under this part.

"Natural disaster" means a hurricane, tornado, storm, flood, highwater, wind-driven water, tidal wave, tsunami, earthquake, volcanic erruption, landslide, mudslide, drought, fire, explosion, or other natural catastrophe which results in the loss of employment.

"Permanent closure of a plant or facility" means a plant or facility that has terminated all employment at the plant or facility site and does not intend to reopen the plant or resume business on that site and where the plant or facility is not expected to be sold and reopened by another owner.

"Program year" means the annual period from July 1 through June 30.

"Successful participation in education" means the condition when an eligible individual has:

(i) Reenrolled in secondary school or its equivalent and matriculated to the next grade level or its equivalent within 1 year of enrollment;

(ii) Enrolled in an accredited vocational or technical school not less than full time and has made satisfactory progress in a course of study which can reasonably be expected to lead to employment; or

(iii) Obtained the equivalent of a secondary school diploma within 12 months following the individual's determination of eligibility for the incentive bonus program (section 504(c)).

"Successful participation in other activities" means the condition when an eligible individual has completed those activities that provide an individual with the skills necessary to apply for and be considered for unsubsidized employment opportunities on a competitive basis with other applicants. Such employment opportunities shall be considered to be those for which the participant would not have qualified

prior to participation in programs under this part.

"Successful participation in training" means the condition when an eligible individual has successfully completed a training program offered under JTPA, including a regionally accredited vocational skill classroom training program, an on-the-job training program or a work experience program, which can reasonably be expected to lead to unsubsidized employment.

"Supported employment" means competitive work in integrated work settings:

(i) For individuals with severe handicaps for whom competitive employment has not traditionally occurred, or

(ii) For individuals for whom competitive employment has been interrupted or intermittent as a result of a severe disability, and who, because of their handicap, need ongoing support services to perform such work. Such term includes transitional employment for individuals with chronic mental illness (section 502(5)).

"Welfare assistance" means:

(i) Cash payments made pursuant to Part A of Title IV of the Social Security Act, relating to aid to families with dependent children (AFDC).

(ii) General welfare assistance to Indians, as provided pursuant to the Act of November 2, 1921 (25 U.S.C. 13), commonly referred to as the Snyder Act; or

(iii) Cash assistance and medical assistance for refugees made available pursuant to section 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) (section 502(1)).

Subpart B—Program Planning and Operation

§ 637.10 Allotments to States.

(a) Funds appropriated to carry out programs under this part may be used by the Secretary for such programs only if the total funds appropriated under Title II–A of JTPA for the same program year exceed the total of the funds appropriated for the Title II–A program for the previous program year adjusted by the change in the Consumer Price Index for All Urban Consumers since the previous year appropriation (section 3(e)(2)).

(b) For each program year for which funds are appropriated to carry out programs under this part, the Secretary shall pay to each participating State the amount the State is eligible to receive in accordance with this part. No payments shall be made for any years for which funds are not appropriated and/or not available (section 507(a)).

(c) If the appropriation is not sufficient to pay to each State the amount it is eligible to receive in accordance with this part, the State shall receive a percentage of the total available funds equal to the percentage of its bonus compared to the national total of bonuses (section 507(b)).

(d) If an additional amount is made available after the application of paragraph (c) of this section, such additional amount shall be allocated among the States by increasing payment in the same manner as was used to reduce payment, except that no State shall be paid an amount which exceeds the amount to which it is eligible (section 507(c)).

(e) Following the submission and approval of an application for an incentive bonus payment, but prior to receipt of such payment, Governors may reserve from State funds an amount equal to the amount of the approved bonus incentive request and may use such amount for activities authorized under this program. Subsequent bonus payments received may be used for reimbursement of such expenditures (section 508(a)).

§ 637.11 Notice of intent to participate.

(a) Any State seeking to participate in the incentive bonus program shall notify the Secretary of its intent to do so no later than 30 days before the beginning of its first program year of participation (i.e., June 1) (section 506(a)).

(b) Pursuant to instructions issued by the Secretary, the notification referenced in paragraph (a) of this section shall be in the form of a letter from the Governor to the Secretary advising the Secretary of the State's intention to apply for, receive and expend bonuses under this program in a manner consistent with this part (section 506(b)(2)).

(c) The notice of intent to participate shall also advise the Secretary of a decision by any service delivery area not to participate in the program (section 506(d)).

(d) Incentive bonuses may be claimed by a State for individuals who participate in education, training, or other activities under JTPA and are placed in employment after the State's submission of a notice of intent to participate.

(e) A Governor may withdraw the State's participation in the incentive bonus program in any program year by submitting a written notice of withdrawal. A State that decides to withdraw must assure that it is in compliance with the requirements of § 637.14(d) of this part.

§ 637.12 Incentive bonus program applications.

(a) Any State participating in title V activities shall have a written procedure for establishing the eligibility of individuals for whom an incentive bonus may be claimed and for tracking the activities of such individuals to assure that they comply with all statutory requirements necessary to qualify for an incentive bonus. A copy of this written procedure shall be provided to the Secretary no later than March 31 of the State's first program year of participation. Modifications to the procedure shall be provided immediately.

(b) Any State seeking to receive an incentive bonus under this title shall submit an Incentive Bonus Program application pursuant to instructions issued by the Secretary (section 506(b)(1)).

(c) Such application for any program year shall be submitted by the State to the Secretary no later than August 31 following the end of the program year for which the bonus is being claimed. A copy of such application shall also be submitted at the same time to the appropriate DOL Employment and Training Administration Regional Office.

(d) A State shall submit with each Incentive Bonus Program application a certification that documentation is available to support that each individual for whom a bonus is being claimed did, in fact, meet the requirements of § 637.15 of this part.

(e) All documentation referenced in paragraph (c) of this section shall be available to the Secretary, as determined necessary by the Secretary, for verification and audit purposes.

§ 637.13 Review, verification and approval of applications for incentive bonus payments.

(a) The Secretary shall review all applications for overall compliance with JTPA, the requirements of this part, and the instructions issued by the Secretary.

(b) The Secretary shall verify the accuracy of the information contained in each application using a sampling methodology developed by the Department of Labor and approved by the Comptroller General of the United States (section 506(c)).

(c) The Secretary shall accept for payment purposes the State's eligibility finding for an individual unless the Secretary establishes that such individual is not eligible. If the Secretary establishes that such individual is not eligible, the amount of the incentive

bonus payment shall be reduced accordingly (section 506(c)).

(d) The Secretary shall inform a State within 60 days after receipt of the application as to whether or not its application has been approved (section 506(c)).

(e) Where less than 10 percent of any sample, selected in accordance with the procedure established under paragraph (b) of this section, contains questioned information, such application shall be approved, but the amount of the bonus payment shall be reduced proportionately by the percentage of the sample questioned.

(f) When more than 10 percent of any sample contains questioned information, such application shall be denied. Subject to paragraph (g) of this section, the State shall then be required to review all the information contained in the application and resubmit it.

(g) Whenever the Department questions, pursuant to paragraph (e) or (f) of this section, a State's application for an incentive bonus payment, an initial notice of reduction or denial of payment shall be issued. The Governor will then be provided sufficient time to respond to the reasons for such denial before a final decision is made. The Department will work with the State to resolve any question raised during the verification review.

(h) If additional information provided does not resolve questions raised during the verification review, a final denial of payment shall be issued. The Governor may then appeal the decision in accordance with the procedures at §§ 629.54(d) and 629.57 of this chapter.

§ 637.14 Startup grants.

(a) *General.* (1) Each State agreeing to participate shall be eligible to apply for startup funds which may be available for expenditure during the first 2 years of the State's participation in the program (section 510(c)(3)(A)).

(2) Expenditure of any portion of the State startup grant funds shall be considered an agreement by the State to participate in this program for not less than two consecutive program years, beginning with the first program year in which these incentive grant funds may be expended. Expenditure of the startup funds may commence at the start of the program year following the program year in which the determination to provide startup grant funds is made (section 510(c)(3)(A)).

(b) *Application.* (1 Any State wishing to apply for startup funds shall submit to the Secretary a State startup grant application no later than 120 days before the beginning of the first program year of the State's participation in the incentive bonus program (section 510(a)).

(2) Such application shall include at a minimum the following information:

(i) A line item budget listing the specific activities for which funds are being requested, and the requested amount for each activity.

(ii) A justification of need for each activity including a description of how the activity would facilitate participation; and

(iii) The total amount of funds requested; and

(c) *Determination of Awards.* The Secretary shall determine the amount to be awarded to the State based on the need demonstrated in the application. The Secretary shall notify the State of this determination within 60 days of submission (section 510(c) (1) and (2)).

(d) Where a State decides not to submit the notice of intent to participate as required under this part, the State shall not incur any costs against any funds awarded in accordance with this section. In such a situation, all funds awarded by the Secretary pursuant to this section shall be recaptured by the Secretary.

(e) Any amount of any award of startup costs made to a State, against which costs have not been incurred by the end of the second program year following the program year in which the determination was made, shall be reallocated and reobligated to one or more other participating States. In accordance with section 161(b) of the Act, costs may be incurred against such reallotted funds only during the third program year following the program year in which the funds were originally awarded (section 510(c)(3)(B)).

(f)(1) Startup grant funds shall be used for activities described in section 508(b) of the Act and for higher costs incurred in overcoming the substantial barriers to employment experienced by eligible individuals under this part (section 510(c)(3)(C))

(2) Startup grant funds may be allocated by the State to State agencies or service delivery areas within the State for activities consistent with paragraph (f)(1) of this section (section 510(d)).

§ 637.15 Eligibility criteria for individuals eligible to be counted in determining incentive bonuses.

(a)(1) In determining the State entitlement to an incentive bonus payment, a State may count individuals who meet the requirements of paragraph (b) of this section, provided that:

(i) Such individuals are in excess of the total number of such eligible individuals placed in employment in the State during the base period as established in this part (section 505(a)); and

(ii) Such individuals no longer receive cash benefits provided under welfare assistance or disability assistance, unless receipt of such cash benefit:

(A) Is limited to 1 calendar quarter, or an equivalent period, during 5 calendar quarters used to determine continuous employment; and

(B) Was caused by a termination of employment due to a layoff or permanent closure of a plant or facility or a relocation of Federal facilities or a natural disaster (section 504(a)(4)).

(2) Individuals counted pursuant to paragraph (a)(1) of this section must also:

(i) Have successfully participated in education, training, or other activities, irrespective of funding source (section 504(a)(1));

(ii) Have been placed in unsubsidized continuous employment, or supported employment following such participation (section 504(a)(2)); and

(iii) Receive from such employment a qualified wage or income which is greater than or equal to such individual's placement bonus base (section 504(a)(3)).

(b) An individual shall be eligible to be counted as part of the State's entitlement to an incentive bonus payment under this part if the individual meets the requirements of paragraph (a) of this section and is:

(1) A long-term recipient of welfare assistance, who is the head of a household; and had no marketable or significant work experience during the year preceding determination of eligibility for this program under the Act;

(2) A young recipient who is the head of household; was receiving welfare assistance at the time determination of eligibility was made for this program under this Act; has not attained 22 years of age; and has not completed secondary school or its equivalent; and had no marketable or significant work experience during the year preceding determination of eligibility for programs offered under this part,

(3) A blind or disabled recipient who is a long-term recipient of disability assistance, and had no marketable or significant work experience during the year preceding determination of eligibility for programs offered under this part, or

(4) A young blind or disabled recipient who has not attained 22 years of age, was receiving disability assistance at the time determination of eligibility was made for programs under this Act; and

had no marketable or significant work experience during the year preceding such determination of eligibility (section 503).

§ 637.16 Determination of incentive bonuses.

(a) The amount of the incentive bonus to which a State shall be entitled shall be determined in accordance with the requirements in this section.

(b) The 3-year period for claiming bonuses for any particular individual shall begin on the date that such individual first successfully completes the eligibility requirements that the State utilized as the basis for claiming initial bonus.

(c) The total incentive bonus to which a State shall be entitled shall be the sum of the incentive bonuses for each eligible individual. For purposes of claiming an incentive bonus, an individual shall be determined eligible to be included if the participant successfully completes each performance requirement prior to the end of the program year for which the total incentive bonus is being claimed by the State. Performance requirements are:

(1) *For the first year*—(i) *For the long-term recipient.* Such individual must have successfully participated in education, training or other activities provided under JTPA; successfully completed one year of unsubsidized continuous employment; received a wage or income which is greater than or equal to such individual's placement bonus base; and no longer receives welfare assistance (section 504(a)).

(ii) *For the young recipient.* Such individual must have successfully participated in education, training or other activities provided under JTPA; successfully completed one year of unsubsidized continuous employment; received a wage or income which is greater than or equal to such individual's placement bonus base; and no longer receives welfare assistance (section 504(a) and (c)).

(iii) *For the blind or disabled recipient* Such individual must have successfully participated in education, training or other activities provided under JTPA..successfully completed one year of unsubsidized continuous employment or one year of supported employment following participation in JTPA activities, received a wage or income which is greater than or equal to such individual's placement bonus base; and no longer receives disability assistance (section 504(a)).

(iv) *For the young blind or disabled recipient.* Such individual must have successfully participated in education, training or other activities provided under JTPA; successfully completed one year of unsubsidized continuous employment or one year of supported employment following participation in JTPA activities; received a wage or income which is greater than or equal to such individual's placement bonus base; and no longer receives disability assistance (section 504(a) and (c)).

(2) *For the second year:* All individuals for whom a placement bonus was approved or a first year must meet the same first year bonus payments requirements in the second year as they met for the first year bonus payment except that participation in training, education or other activities will not be required. This includes a second year of continuous employment or supported work. For purposes of determining continuous employment, the second year shall begin with the quarter following the last quarter used in determining the first year's continuous employment period.

(3) *For the third year:* All individuals for whom a placement bonus was approved for a second year must meet the same second year bonus payment requirements in the third year as they met for the second year bonus payment. This includes a third year of continuous employment or supported work. For the purposes of determining continuous employment, the third year shall begin with the quarter following the last quarter used in determining the second year's continuous employment period.

(d) Placement bonuses may only be claimed for successful placements in excess of the number of such placements of individuals meeting the eligibility requirements in this part made in the State during Program Year (PY) 1987 or such other base period as provided by agreement between the Governor and the Secretary To establish the base period a State shall submit, pursuant to instructions issued by the Secretary, base period documentation to the Secretary no later than March 31 of the first program year of a State's participation in the Incentive Bonus Program. Such documentation must include the total number of placements of eligible individuals made in the State during PY 1987 or such other year as may be agreed to by the Governor and the Secretary. If the State wishes to request a base period other than PY 1987, it must explain the reasons for requesting such base period and include documentation of the total number of eligible individuals made in the State during that proposed base period, as well as during PY 1987. If no agreement can be reached, PY 1987 shall be the base period. The Secretary shall consider the request for the establishment of such base period and respond to the request in a timely fashion. Pursuant to section 505(a) of the Act, the Secretary reserves the right to suggest a different base period. The final decision on a base period shall be reached pursuant to agreement between the Secretary and the Governor (section 505(a)).

(e) In computing the number of successful placements in the base period, the State shall document all such placements of individuals eligible under this part who participated in the same types of programs or activities which the State will use in subsequent program years to determine eligibility for incentive bonuses. The State shall maintain written procedures describing the methods used to determine eligibility and placements during the base year.

(f) The dollar amount of the placement bonus for each eligible individual for each year shall be 75 percent of the placement bonus base (section 505(a)).

§ 637.17 Determination of placement bonus base.

(a) The placement bonus base for the long-term recipient is equal to one-half of the sum of the Federal contribution to amounts received by the long-term recipient and family for the two years prior to determination of eligibility under this part under:

(1) Part A of Title IV of the Social Security Act (42 U.S.C. 601 *et seq.*); or

(2) General welfare assistance under the Snyder Act (25 U.S.C. 13); or

(3) Section 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)), relating to cash assistance and/or medical assistance to refugees (section 5050(b)(1)).

(b) The placement bonus base for the young recipient, who has received benefits under Part A of Title IV of the Social Security Act (42 U.S.C. 601 *et seq.*), or general welfare assistance under the Snyder Act (25 U.S.C. 13), or section 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e) relating to cash assistance and/or medical assistance, is equal to the annual amount to which the young recipient would have been entitled for the one year period prior to the determination of eligibility under this part (section 505(b)(2)).

(c) The placement bonus base for the blind or disabled recipient is equal to one-half of the sum of the Federal contribution in amounts received by the blind or disabled recipient under Title XVII of the Social Security Act (42 U.S.C. 1801 *et seq*) for the two years

prior to determination of eligibility under this part (section 505(c)(1)).

(d) The placement bonus base for the young blind or disabled recipient who has received benefits under Title XVI of the Social Security Act (42 U.S.C. 1801 *et seq.*) is equal to the annual amount to which the young blind or disabled recipient would have been entitled for the one year period prior to the determination of eligibility under this part (section 505(c)(2)).

§ 637.18 Use of incentive bonuses.

(a) During any program year, the Governor may use an amount not to exceed 15 percent of the State's total bonus payment, or an amount reserved from State funds which is equivalent to not more than 15 percent of the amount of the approved bonus payments, for the administrative costs incurred under this program, including data and information collection and compilation, recordkeeping, or the preparation of applications for incentive bonuses (section 508(b)(1)(A)).

(b) The remainder, not less than 85 percent of the incentive bonuses received, shall be distributed to participating SDAs by an equitable method of distribution which is based on the degree to which the effort of the SDA contributed to the State's qualification for incentive bonus funds. The Governor and representatives of participating SDAs shall agree on the method of distribution to be used (section 508(b)(1)(B)).

(c) Except as provided in paragraph (d) of this section, SDAs may use a maximum of 10 percent of the incentive bonus received from the State for the administrative costs of establishing and maintaining systems necessary for operation of programs under this Title, including incentive payments described in section 508(c) of the Act, technical assistance, data and information collection and compilation, management information systems, post-program followup activities, and research and evaluation activities (section 508(b)(2)(A)).

(d) If an SDA determines that administrative costs will exceed 10 percent, the SDA may, in accordance with criteria and guidelines established by the Governor, and subject to approval by the Governor, use an additional 5 percent for administration (section 508(b)(2)(B)).

(e) All remaining funds received by the SDA shall be used for activities similar to activities described in section 204 of JTPA and shall be subject to regulations governing the operation of programs under Title II–A of JTPA (section 508(b)(2)(A)).

Subpart C—Additional Title V Administrative Standards and Procedures

§ 637.20 Management systems, reporting and recordkeeping.

(a) The Governor shall ensure that the State's financial management system and recordkeeping system comply with § 629.35 of this chapter.

(b) Notwithstanding the provisions of § 629.36 of this chapter, the Governor shall report to the Secretary pursuant to instructions issued by the Secretary regarding activities funded under this part. Reports shall be required semi-annually and annually. Reports shall be provided to the Secretary within 45 calendar days after the end of the report period (section 165(a)(2)).

(c) The Governor shall assure that appropriate and adequate records are maintained for the required time period to support all incentive bonus payment applications. Such records shall include documentation to support individuals' eligibility under this part.

§ 637.21 Federal monitoring and oversight.

The Secretary shall conduct oversight of the programs and activities conducted in accordance with this part. The Secretary shall issue separate guidelines regarding the process to be followed in conducting such oversight.

§ 637.22 Audits.

The Governor shall ensure that the State complies with the audit provisions at § 629.42 of this chapter.

Signed at Washington, DC, this 30th day of November, 1989.

Elizabeth Dole,

Secretary of Labor.

[FR Doc. 89–28406 Filed 12–6–89; 8:45 am]

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federal register

Thursday
December 7, 1989

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 872

Dental Devices; Premarket Approval of Endosseous Implant; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 872

[Docket No. 88N-0244]

Dental Devices; Effective Date of Requirement for Premarket Approval of Endosseous Implant

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; opportunity to request change in classification.

SUMMARY: The Food and Drug Administration (FDA) is proposing to require the filing of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for the endosseous implant, a medical device. The agency is also summarizing its proposed findings regarding the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to meet the statute's approval requirements, and the benefits to the public from use of the device. In addition, FDA is announcing an opportunity for interested persons to request the agency to change the classification of the device based on new information. This action is a followup to FDA's notice of intent of January 6, 1989 (54 FR 550).

DATES: Comments by February 5, 1990; requests for a change in classification by December 22, 1989. FDA intends that, if a final rule is issued based on this proposal, PMA's will be required to be submitted by September 1, 1992.

ADDRESSES: Written comments or requests for a change in classification to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David A. Segerson, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1180.

SUPPLEMENTARY INFORMATION:

I. Background

Section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c) provides for the classification of medical devices into one of three regulatory classes: Class I (general controls), class II (performance standards), or class III (premarket approval). As a general rule, devices that were on the market before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295), and devices marketed on or after that date that are substantially equivalent to such devices have been, or are being, classified by FDA. For the sake of convenience, this preamble refers to both the devices that were on the market before May 28, 1976, and the substantially equivalent devices that were marketed on or after that date as "preamendments devices." Sections 501(f), 513, and 515(b) of the act (21 U.S.C. 351(f), 360c, and 360e(b)), taken together, establish as a general requirement that a preamendments device that FDA has classified into class III is subject, in accordance with section 515 of the act, to premarket approval. (As an alternative procedure for premarket approval, section 515(f) of the act provides for development of a PDP, the last stage of which is for FDA to declare that the PDP has been completed.) A preamendments class III device may be commercially distributed without a filed PMA or notice of completion of a PDP until 90 days after FDA's promulgation of a final rule requiring premarket approval for the device, or 30 months after final classification of the device, whichever is later. Also, such a device is exempt from the investigational device exemption (IDE) regulations (21 CFR part 812) until the date stipulated by FDA in the final rule requiring premarket approval for that device. A device that was not in commercial distribution before May 28, 1976, or that has not been found by FDA to be substantially equivalent to such a device, is required to have an approved PMA or a declared completed PDP in effect before it may be marketed (see 21 CFR 872.3).

Section 515(b)(2)(A) of the act provides that a proceeding for the promulgation of a final rule to require premarket approval shall be initiated by publication of a notice of proposed rulemaking containing: (1) The proposed rule, (2) proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to have an approved PMA or a declared completed PDP and the benefit to the public from use of the device, (3) an opportunity for the submission of comments on the proposed rule and the proposed findings, and (4) an opportunity to request a change in the classification of the device based on new information relevant to the classification of the device.

Section 515(b)(2)(B) of the act provides that if FDA receives a request for a change in the classification of the device within 15 days of the publication of the notice, FDA shall, within 60 days of the publication of the notice, consult with the appropriate FDA advisory committee and publish a notice either denying the request or announcing its intent to initiate a proceeding to reclassify the device under section 513(e) of the act. If FDA does not initiate such a proceeding, section 515(b)(3) of the act provides that FDA shall, after the close of the comment period on the proposed rule and consideration of any comments received, promulgate a final rule to require premarket approval, or publish a notice terminating the proceeding. If FDA terminates the proceeding, FDA is required to initiate a proceeding to reclassify the device under section 513(e) of the act, unless the reason for termination is that the device is a banned device under section 516 of the act (21 U.S.C. 360f).

If a proposed rule to require premarket approval for a preamendments device is made final, section 501(f) of the act mandates that a PMA or a notice of completion of a PDP for any such device be filed within 90 days of the date of promulgation of the final rule, or 30 months after final classification of the device, whichever is later. If a PMA or a notice of completion of a PDP for such a device is not filed by the later of the two dates, commercial distribution of the device is required to cease. The device may, however, be distributed for investigational use if the manufacturer, importer, or other sponsor of the device complies with the IDE regulations.

If a PMA or a notice of completion of a PDP has not been filed, and there is not any IDE in effect, the device is deemed to be adulterated within the meaning of section 501(f)(1)(A) of the act, and subject to seizure and condemnation under section 304 of the act (21 U.S.C. 334).

Shipment of the device in interstate commerce will be subject to injunction under section 302 of the act (21 U.S.C. 332), and the individuals responsible for such shipment will be subject to prosecution under section 303 of the act (21 U.S.C. 333).

The act does not permit an extension of the 90-day period after promulgation of a final rule within which an application or notice is required to be filed. The House Report on the amendments states that "the thirty month 'grace period' afforded after classification of a device into class III is sufficient time for manufacturers and importers to develop the data and conduct the investigations necessary to support an application for premarket approval" (H. Rept. 94-853, 94th Cong., 2d Sess. 42 (1976)).

II. Classification of Endosseous Implant

In the **Federal Register** of August 12, 1987 (52 FR 30082), FDA issued a final rule (21 CFR 872.3640) classifying the endosseous implant into class III. The preamble to the proposal to classify the device (45 FR 85962; December 30, 1980) included the recommendation of the Dental Devices Panel (the Panel), an FDA advisory committee, regarding the classification of the device. The Panel's recommendation included a summary of the reasons the device should be subject to premarket approval and identified certain risks to health presented by the device. The Panel also recommended under section 513(c)(2)(A) of the act that a high priority for the application of section 515 of the act be assigned to the endosseous implant. The preamble to the final rule classifying the device advised that the date by which a PMA for the device (or notice of completion of a PDP) could be required was February 28, 1990, or within 90 days after promulgation of a separate regulation requiring premarket approval of the device, whichever occurs later.

In the **Federal Register** of January 6, 1989 (54 FR 550 at 551), FDA published a notice of intent to initiate proceedings to require premarket approval of 31 preamendments class III devices assigned a high priority by FDA for the application of premarket approval requirements. Among other things, the notice describes the factors FDA takes into account in establishing priorities for initiating proceedings under section 515(b) of the act for promulgating final rules requiring that preamendments class III devices have approved PMA's or declared completed PDP's. Using those factors, FDA has determined that the endosseous implant has a high priority for initiating a proceeding to require premarket approval.

Accordingly, FDA is commencing a proceeding under section 515(b) of the act to require that the endosseous implant have an approved PMA or a PDP that has been declared completed.

A. Dates New Requirements Apply

In accordance with section 515(b) of the act, FDA is proposing to require that a PMA or a notice of completion of a PDP be filed with the agency for the endosseous implant by September 1, 1992. This additional period is intended to allow manufacturers to conduct clinical trials that are anticipated to span a 3-year period. An applicant whose device was in commercial distribution before May 28, 1976, or has been found by FDA to be substantially equivalent to such a device, will be permitted to continue marketing the endosseous implant during FDA's review of the PMA or notice of completion of the PDP. FDA intends to review any PMA for the device within 180 days, and any notice of completion of a PDP for the device within 90 days of the date of filing. FDA cautions that under section 515(d)(1)(B)(i) of the act, FDA may not enter into an agreement to extend the review period for a PMA unless the agency finds that "* * * the continued availability of the device is necessary for the public health" (see § 872.3).

FDA intends that, under § 812.2(d) (21 CFR 812.2(d)), the preamble to any final rule based on this proposal will stipulate that as of the date on which a PMA or a notice of completion of a PDP is required to be filed, the exemptions in § 812.2(c)(1) and (2) from the requirements of the IDE regulations for preamendments class III devices will cease to apply to any endosseous implant which is: (1) Not legally on the market on or before that date, or (2) legally on the market on or before that date but for which a PMA or notice of completion of a PDP is not filed by that date, or for which PMA approval has been denied or withdrawn.

If a PMA or a notice of completion of a PDP for the endosseous implant is not filed with FDA by September 1, 1992, commercial distribution of the device will be required to cease. The device may be distributed for investigational use only if the requirements of the IDE regulations regarding significant risk devices are met. The requirements for significant risk devices include submitting an IDE application to FDA for its review and approval. An approved IDE is required to be in effect before an investigation of the device may be initiated or continued. FDA, therefore, cautions that IDE applications should be submitted to FDA at least 30 days before the end of the 90-day period to avoid interrupting investigations.

B. Description of Device

The endosseous implant is a device made of material, such as titanium, intended to be surgically placed in the bone of the upper or lower jaw arches to provide support for prosthetic devices, such as artificial teeth, and to restore the patient's chewing function. The abutment used as the actual attachment site of the prosthesis is considered part of the endosseous implant. Endosseous implants indicated for prosthetic attachment are used to attach either removable or fixed prostheses (crown, partial dentures, or complete dentures) and inserted in either the maxillary or mandibular alveolar ridge.

C. Proposed Findings with Respect to Risk and Benefits

As required by section 515(b) of the act, FDA is publishing its proposed findings regarding: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring the endosseous implant to have an approved PMA or a declared complete PDP, and (2) the benefits to the public from use of the device.

D. Degree of Risk

The Panel identified several risks associated with endosseous implants: Local soft tissue degeneration and bone resorption, paresthesia, perforation of maxillary sinus, perforation of labial and lingual plates, and exfoliation. In addition to the risks identified by the Panel, FDA believes that local and systemic infection and implant fracture are significant risks associated with the use of endosseous implants for prosthetic attachment. After reviewing all available literature on endosseous implants for prosthetic attachment, the Panel based its recommendations, in part, on its conclusion that the safety and effectiveness of the device depends on its design and that it is not possible to establish an adequate performance standard for this generic type of device.

The existence of risks associated with implants for prosthetic attachment have been documented in numerous books and articles (Refs. 1, 2, 5, 6, 8, 9, and 11 through 16), but the rate of occurrence is poorly documented. Specific manufacturers have reported only successes or failures. The reports show that a small percentage of designs have been implanted in patients in excess of 5 to 10 years with success rates of 70 percent or better (Ref. 17).

E. Benefits of Device

In addition to esthetics, the primary benefit achieved by placing an endosseous implant for prosthetic attachment in the mandibular or maxillary bone is to regain or improve masticatory function. According to a national survey by the National Institute of Dental Research (Ref. 10) concerning the oral health of employed adults in the United States, 10 percent of adults, age 50 to 64, and 15 percent over 64 have complete tooth loss in one arch. Total tooth loss affects approximately 5 percent of those aged 40 to 44, and 50 percent of the adults 80 and over. As far as average tooth loss is concerned, persons from 18 to 34 years of age had lost fewer than 2 teeth, persons 55 to 64 years had lost 10 teeth, and persons 65 and older had lost 17.9 teeth. It is important to note that not all of these

adults described in the aforementioned statistics would be eligible for prosthetic type endosseous implants. Other types of dental procedures may be more appropriate or there may be inadequate bone support for implants. The statistics do describe a large pool of people who could benefit from prosthetic type endosseous implants.

F. Discussion of Risks and Benefits

The probable risks and benefits to the public from use of endosseous implants have not been well defined. The numerous designs of endosseous implants that are currently on the market do not have adequate clinical evidence to demonstrate that the implants are safe and effective.

In June 1978, the Harvard Consensus Conference (Ref. 11) reported that the safety and effectiveness of endosseous implants had not been established. The conference also detailed the fact that although numerous articles have been published relating to the success of the implants, they invariably fail to cull meaningful data from their work.

In other words, reports generated on this type of implant are based on clinical opinion rather than scientific evidence. In addition, the Harvard Consensus Conference (June 1978) (Ref. 11) indicated that implants had been implanted for long periods of time, but numerous implants had resulted in immeasurable destruction in patients' mouths.

In more than 10 years since the Harvard Consensus Conference, there have been reports of success in prosthetic type endosseous implants, but these reports pertain to a limited number of designs (Refs. 7 and 12). Still, scientifically valid evidence of safety and effectiveness does not exist in the published literature for many of these implant systems (Ref. 7). The American Dental Association (ADA), in analyzing the present state of endosseous implants, does not endorse the routine use of these devices (Refs. 3 and 4).

Based on the lack of scientific data reported in the literature and proliferation of designs and coatings of different implant systems, FDA concludes that there is not an adequate basis for establishing the safety and effectiveness of endosseous implants and the generic type of device should be subject to premarket approval to determine whether the risks of using the device are adequately balanced by its benefits. Applicants should submit PMA's in accordance with FDA's "Premarket Approval (PMA) Manual" and "Guidance for the Arrangement and Content of a Premarket Approval (PMA) Application for an Endosseous Implant for Prosthetic Attachment—May 16, 1989" (available upon request from the Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850).

The submission should contain all data and information on: (1) The risks known to the applicant, including those risks that have not been identified in this document, (2) data supporting the effectiveness, based on its indications for use, of the specific endosseous implant, and (3) summaries of all existing preclinical and clinical data from investigations on the safety and effectiveness for the device for which premarket approval is sought.

III. Opportunity To Request a Change in Classification

Before requiring the filing of a PMA or a notice of completion of a PDP for a device, FDA is required by section 515(b)(2)(A)(i) through (iv) of the act and § 860.132 (21 CFR 860.132) of FDA's regulations governing classification of devices to provide an opportunity for interested persons to request a change in the classification of the device based on new information relevant to its classification. The legal standard governing reclassification under section 513(e) of the act and § 860.123 is discussed in detail in FDA's proposals to reclassify daily wear spherical contact lenses consisting of rigid gas permeable plastic materials and daily wear optically spherical (soft) contact lenses from class III into class I (47 FR 53402 and 53411; November 26, 1982).

A request for a change in the classification of the implanted endosseous implant is to be in the form of a reclassification petition containing the information required by § 860.123, including new information relevant to the classification of the device, and shall, under section 515(b)(2)(B) of the act, be submitted by December 22, 1989.

The agency advises that to assure timely filing of any such petition, requests should be submitted to the Dockets Management Branch (address above) and not to the address provided in § 860.123(b)(1). If a timely request for a change in classification of the endosseous implant is submitted, the agency will by February 5, 1990, after consultation with the appropriate FDA advisory committee, and by an order published in the **Federal Register**, either deny the request or give notice of its intent to initiate a change in the classification of the device in accordance with section 513(e) of the act and § 860.130 of the regulations.

IV. References

The following information has been placed on display in the Dockets Management Branch (address above) and may be reviewed by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Babbush, C.A., *Surgical Atlas of Dental Implant Techniques*, W.B. Saunders Co., Philadelphia, 1980.

2. Branemark, P.I., A. Zarb, and T. Albrektsson, *Tissue-Integrated Prosthesis, Osseointegration in Clinical Dentistry*, Quintessence Publishing Co., 1988.

3. Council on Dental Materials, Instruments, and Equipment, "Dental Endosseous Implant," *Journal of the American Dental Association*, pp. 949–950, December 1986.

4. Council on Dental Materials, Instruments, and Equipment, "Summary of the Results of the Endosseous Implant Registry," *Journal of the American Dental Association*, pp. 672–674, May 1987.

5. Fonseco, R., and W.H. Davis, Reconstructive Preprosthetic Oral and Maxillofacial Surgery, W.B. Saunders Co., Philadelphia, 1986.

6. Gross, U.M., "Biocompatibility: The Interaction of Biomaterials and Host Response," National Institutes of Health Consensus Conference on Dental Implants, Bethesda, MD, 1988.

7. Laskin, D.M., "Implantology 1986," *Journal of Oral and Maxillofacial Surgery*, W.B. Saunders Co., 44:483, 1986.

8. Lemons, J.E., "Dental Implant Retrieval Analysis," National Institutes of Health Consensus Conference on Dental Implants, Bethesda, MD. 1988.

9. McKenny, R., and J.E. Lemons, eds., The Dental Implant, PSG Publishing Co., Massachusetts, 1985.

10. Meskin, L.H., and J. Brown, "Prevalence and Patterns of Tooth Loss in U.S. Adult and Senior Populations," National Institutes of Health Consensus Conference on Dental Implants, Bethesda, MD, 1988.

11. National Institutes of Health, "Dental Implants: Benefit and Risk, A Consensus Development Conference," Harvard University, June 13 and 14, 1978.

12. National Institutes of Health, "NIH Consensus Development Conference—Dental Implants," Bethesda, MD, 1988.

13. Newman, M.G., and T.F. Fleming, "Periodontal Considerations of Implants and Implant-Associated Microbiota," National Institutes of Health Consensus Conference on Dental Implants, Bethesda, MD, 1988.

14. Schnitman, P.A., and L.B. Shulman, "Recommendations of the Consensus Development Conference on Dental Implants," *Journal of the American Dental Association*, pp. 373–377, 1979.

15. Shulman, L. B., "Surgical Considerations in Implant Dentistry," National Institutes of Health Consensus Conference on Dental Implants, Bethesda, MD, 1988.

16. Smith, D. C., and D. F. Williams, Biocompatibility of Dental Materials, Vol. IV, CRC Press, Florida, 1982.

17. Weiss, Charles M., "Fibro-Osteal and Osteal Integration," National Institutes of

Health Consensus Conference on Dental Implants, Bethesda, MD, 1988.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(b)(12) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Economic Impact

FDA has examined the economic consequences of this proposed regulation in accordance with the criteria in section 1(b) of Executive Order 12291 and found that the proposal would not be a major rule as specified in the Order. Therefore, the agency certifies under the Regulatory Flexibility Act (Pub. L. 96–354) that the proposed regulation would not have a significant economic impact on a substantial number of small entities. An assessment of the economic impact of any final regulation based on this proposal has been placed on file in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 872

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 872 be amended as follows:

PART 872—DENTAL DEVICES

1. The authority citation for 21 CFR part 872 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. Section 872.3640 is amended by revising paragraph (c) to read as follows:

§ 872.3640 Endosseous implant.

* * * * *

(c) *Date premarket approval application (PMA) or notice of completion of product development protocol (PDP) is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before September 1, 1992, for any endosseous implant that was in commercial distribution before May 28, 1976, or that has on or before (a date 90 days after date of publication of a final rule) been found to be substantially equivalent to an endosseous implant that was in commercial distribution before May 28, 1976. Any other endosseous implant shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

Dated: October 11, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–28572 Filed 12–6–89; 8:45 am]

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federal register

Thursday
December 7, 1989

Part IV

The President

Part IV

The President

Federal Register
Vol. 54, No. 234
Thursday, December 7, 1989

Presidential Documents

Title 3—

The President

Proclamation 6080 of December 5, 1989

National American Indian Heritage Week, 1989

By the President of the United States of America

A Proclamation

During our recent celebration of Thanksgiving, our Nation paused to reflect upon the peace and prosperity with which we have been blessed by our Creator. In so doing, we carried on a tradition observed by the pilgrims at Plymouth Colony when they gathered to give thanks for an abundant harvest following a cold and bitter winter. The settlers at Plymouth Colony were able to reap that harvest largely because of the help they received from neighboring Indians. Today, as we observe American Indian Heritage Week, we recall the many contributions Native Americans have made over the years to the development of this great land.

On numerous occasions, American Indians helped the early settlers gain a firm footing in the New World, showing them how to farm the strange new soil or acting as guides through uncharted territory. Indeed, throughout our Nation's history, we have learned much from Native Americans. Our cultural heritage has been enriched immeasurably by the many different customs and traditions practiced by American Indians and Native Alaskans. Each tribe has shared with us wonderful portions of its unique history and character.

Native Americans have also served this country with distinction, sharing the wealth of their knowledge and talents. They have been courageous members of the Armed Forces, and they have participated in public service at every level—including the Office of Vice President.

While national policies regarding Indian affairs have been uncertain and often inequitable in the past, tribal elected governments and the United States have now established a unique and special government-to-government relationship, which was strengthened and renewed during the last 2 decades. Today we look forward to greater economic independence and self-sufficiency for Native Americans, and we reaffirm our support for increased Indian control over tribal government affairs.

The Congress, by Senate Joint Resolution 218, has designated the week beginning December 3, 1989, and ending December 9, 1989, as "National American Indian Heritage Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week beginning December 3, 1989, and ending December 9, 1989, as National American Indian Heritage Week, and I ask all Americans to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of December, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-28847
Filed 12-6-89; 11:58 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 6081 of December 5, 1989

National Cities Fight Back Against Drugs Week, 1989

By the President of the United States of America

A Proclamation

The frightening consequences of drug trafficking and illicit drug use can be witnessed in communities throughout the United States—in troubled schools, in neighborhoods scarred by violence, and in overburdened hospitals, social service programs, and law enforcement agencies. All of us pay the tremendous economic costs of the drug problem, but it exacts a far greater toll in the number of lives lost and families destroyed. Those costs can never be reclaimed.

While no part of our Nation has been able to avoid the devastating effects of the traffic and use of illegal drugs, America's cities—large and small—bear the brunt of this plague. In far too many of our Nation's cities, it is unsafe to walk the streets in certain areas; families take shelter behind bolted doors and drawn shades; and hospital staffs struggle to save the lives of infants born addicted to drugs.

Fortunately, however, this terrible problem is not going unchallenged. In every area of the country, cities are fighting back. Today, concerned residents of our Nation's cities are working together to regain control of their streets, their parks, their schools, and their lives.

In the finest tradition of democratic government and voluntary association, individual citizens are standing shoulder to shoulder with local authorities as they confront the merchants of death who deal drugs. They are marching in the streets, asserting their right to live without fear in secure homes and neighborhoods, and they are voting for leaders who will be tough on crime. They are also remaining vigilant against suspicious activity in their communities while encouraging young people to resist the temptation to try drugs. These determined men and women are behaving as responsible citizens in a free and just society by working closely with their local representatives and law enforcement agencies.

Ultimately, it is the actions of concerned Americans that will win the war on drugs. The American people will prevail in this fight because the small percentage of persons who currently buy and sell drugs must one day recognize and accept the morally just stance of the vast majority who do not. This week, we salute those Americans in cities all across our Nation who are serving as full partners in this all-important campaign. They are helping to build a better future for our Nation—a future that is drug-free.

The Congress, by Senate Joint Resolution 205, has designated the week of December 3 through December 9, 1989, as "National Cities Fight Back Against Drugs Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of December 3 through December 9, 1989, as National Cities Fight Back Against Drugs Week. I invite the Governors of the several States, the chief officials of local governments, and the people of the United States to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of December, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

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Vol. 54, No. 234

Thursday, December 7, 1989

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are now available for the 101st Congress, 1st Session, 1989

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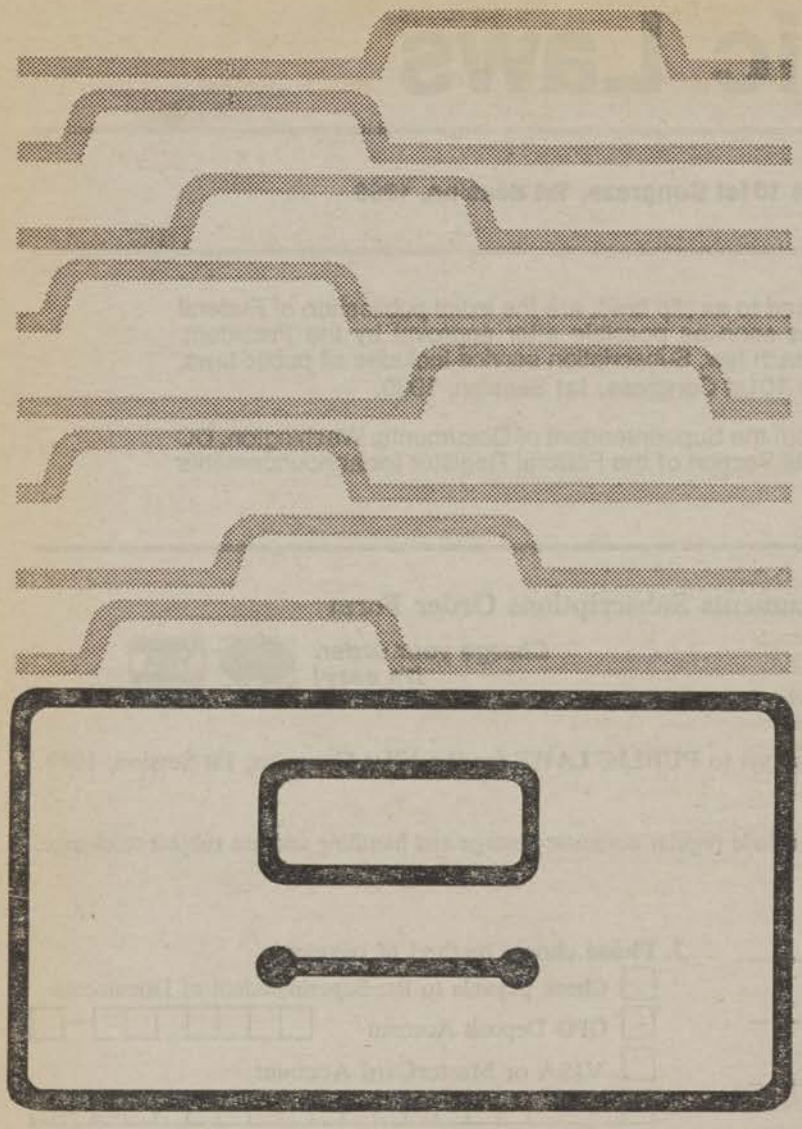

Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

Revised January 1, 1989

The GUIDE to record retention requirements is a useful reference tool, compiled from agency regulations, designed to assist anyone with Federal record-keeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

The GUIDE is formatted and numbered to parallel the CODE OF FEDERAL REGULATIONS (CFR) for uniformity of citation and easy reference to the source document.

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